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WASHINGTON INSTITUTE FOR QUALITY EDUCATION
300 M STREET, S. W. • WASHINGTON, D. C. 20024
TELEPHONE (202) 554-3308

PROPOSAL FOR CONTINUATION OF
THE WASHINGTON INSTITUTE FOR QUALITY EDUCATION

The Washington Institute for Quality Education (WIQE) is a non-profit corporation in the District of Columbia whose purpose is to advance the quality of public education in Washington, D. C., through special programs described in section 501 (c) (3) of the Internal Revenue Code, and contributions to it are deductible by donors, as provided in section 170 of the code.

Enclosed are copies of our financial statements through February 28, 1971. WIQE was established in March, 1968, incorporated on May 3, 1968, and has been in operation since that time.

Our staff consists of a director and an administrative secretary. We have acquired data and are in the process of evaluating, analyzing, and presenting these data for our third and fourth publications in the series on education, which will be entitled The Damned Teachers and The Damned School Administrators and the Budget. Examples of questions raised by the data for these publications are, "How do Washington, D. C., school teachers fare in relation to San Francisco, Chicago, or Philadelphia school teachers?" "What similar measurable problems beset administrators?"

The effects of WIQE research methods are already being felt in many parts of the country. The basic research that went into The Damned Children was the same as that used in the United States District Court in the Hobson v. Hansen cases, which resulted in the landmark decisions on the D. C. schools by U. S. Appeals Court Judge J. Skelly Wright.

The United States Office of Education has adopted the guidelines first outlined in the 1967 Wright decision. The Washington Post reported on September 22, 1970, "The United States Office of Education has announced that it will require nationwide the same thing Judge J. Skelly Wright required here...: In any school district, comparable amounts of state and local money must be spent on every child." This article is attached, along with others that may be of interest to you.

WIQE proposes to enlarge its function in the light of the California Supreme Court decision of August 30, 1971, which decreed the following:

The California public school financing system, with its substantial dependence on local property tax and resultant wide disparities in school revenue, violates the equal protection clause of the Fourteenth Amendment.

We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors.

The state of California is thus faced with the same kind of statistical research that has been done in the District of Columbia by WIQE. We, therefore, propose to offer nationwide services to cities that are interested in painting the same kind of statistical picture of their public schools that has been successfully done in the Nation's Capital. This obviously requires an increase of finances.

Enclosed are copies of the first two reports in our series. These WIQE publications are designed to aid parents and others in identifying inequity in their schools and to provide a tool for reform. The Damned Information's objective is to acquaint parents with the laws governing their rights to these data in their particular states and cities. The Office of Education cannot enforce its own guidelines, as has been proved in the past, unless citizens are aware of the nature of the problems and can simultaneously press for change. It is in this context that WIQE proposes to be of assistance. The Post, on September 4, 1970, pointed out the importance of our first publication and research method in its article entitled "The Next Battle in Education: Equalization of School Funds."

For this year, we have enough money to function for approximately one more month, and we are seeking emergency grants pending a request for larger amounts of funds to expand our operations countrywide.

WIQE has been working on problems in education in cooperation with the Harvard Center for Law and Education, which wrote the preface for The Damned Children, and with The American University Law School and The University of Minnesota.

The final objective of WIQE is to point out existing inequities and to provide tools by which quantitative resources for public education can be distributed fairly and equitably. We have been successful with this in the District of Columbia (witness the Hobson II decision of May 25, 1971, handed down by Judge J. Skelly Wright of the United States District Court of the District of Columbia). These research tools are presented in such a manner as to be clearly understood and usable by center-city parents and interested citizens, so that they can initiate the many needed changes. We also have attempted through our publication, The Damned Information, to provide these parents with information on how to obtain data on their school systems.

As you can see from The Damned Children, WIQE has been instrumental in introducing proven basic research techniques (grocery store arithmetic), which can be utilized by center-city citizens, members of boards of education, and other non-professional educators. We are enclosing a few of the letters received from such groups.

Julius W. Hobson
Director
WIQE

November 18, 1971

enclosures

INTRADISTRICT SCHOOL FINANCING:

CHALLENGE OF THE FUTURE

Julius W. Hobson, Director

The Washington Institute for Quality Education

300 M Street, SW

Washington, D. C. 20024

May 19, 1972

(PROPOSAL AND BUDGET)

The current national controversy over the quality of our public school system points to one conclusion: Educational opportunities are not available to all children on an equal basis. The existence and the enormity of this social problem are directly related to the maldistribution of public educational resources.

By use of a variety of vehicles, from simple segregation to rigid tracking, inferior physical plants and equipment, and unequally distributed resources, the system is designed to benefit poor and black children the least. The result is alienated children who are severely damaged by an inadequate formal education.

The landmark Hobson v. Hansen school case ending in the 1967 Skelly-Wright decision, upheld by the United States Court of Appeals in the District of Columbia, called for the elimination of racial and economic discrimination in the District of Columbia public school system. The basis for this decision presented by the plaintiffs was statistical evidence measuring assignment of teachers, expenditures per pupil, distribution of books and supplies, utilization of homogeneous ability grouping methods, and utilization of classroom space. When related to the color of the population and the economic level of the neighborhoods where the schools were located, the data used in these measures showed definite patterns of racial and economic discrimination.

In the 1967 opinion written by Judge Wright, the District of Columbia public schools were ordered to remedy their discriminatory policies in three areas: integration of teaching staff; equalization of per pupil expenditures based on all regular budget funds; and, abolition of the track system, created by Superintendent Carl Hansen in 1955 to cushion the school system against the effects of integrating white students with blacks from an inferior de jure "separate but unequal" school system. Tracking maintained separation in the more subtle forms of assignment of some pupils to privileged, college preparatory tracks and consignment of others to lower, blue-collar oriented tracks in what Judge Wright termed "an ethnocentric school system dominated by white middle class values."

The District of Columbia school administration and the Board of Education, charged with implementing the court decree immediately, failed to carry out the entire directive. The plaintiffs, therefore, returned to court in 1971 and won a decision in May that ordered the school administration to equalize expenditures based on teachers' salaries from regular budget funds, while allowing the administration to submit alternative compliance plans.

Since its incorporation in 1968 as a non-profit, private, tax-exempt organization, the Washington Institute for Quality Education has continued the type of research that shaped the Hobson v. Hansen case. Our effort has been to make these methods, the basis of which is actually "grocery store arithmetic," available to non-professional educators, parents, and other community groups who want to challenge the inequality of school systems that place many children at an initial disadvantage in dealing with our society.

The U. S. Office of Education has adopted the guidelines outlined in the 1967 Wright decision for application on a national scale. The Washington Post reported on September 22, 1970, "The United States Office of Education has announced that it will require nationwide the same thing Judge J. Skelly Wright required here...: In any school district, comparable amounts of state and local money must be spent on every child." It is apparent, however, that equalization of educational financing and quantitative resources must be won through the courts, as it was in the District of Columbia. To realize these ends, citizens must become aware of their schools' needs, be able to identify their failures, and understand the laws governing their ability to reform them.

Two publications by WIQE present possibilities for such methods of action and statistical research. THE DAMNED CHILDREN (Attachment 1) details the questions posed in the Hobson v. Hansen case and demonstrates graphic statistical analysis of various aspects of the D. C. public schools and their distribution of resources. Its main purpose is to serve as an example of what can be done in other school systems from a layman's point of view. Response to THE DAMNED CHILDREN from individuals, organizations, schools, and universities has been gratifying (Attachment 2).

WIQE's second publication, THE DAMNED INFORMATION, is an important follow-up to THE DAMNED CHILDREN. It is a legal discussion and analysis of the Federal and State Freedom of Information Laws. It explains how to acquire and use public information to effect social change, particularly through litigation, and provides examples of how information was obtained and used in three court cases of discrimination in education, employment, and transportation (Attachment 3).

WIQE's proposed work for the future is to pursue these purposes. Since the 1967 Wright decision, the failure of the D. C. school administration to comply with the court decree is directly related to its inability to produce solid, correct, fundamental

data on which to base computations for compliance. On April 17, 1972, the D. C. Board of Education and the school administration reached an agreement with WIQE to employ our services in providing the necessary intelligence on the public schools in the District of Columbia that would enable them to comply with the Wright decrees of 1967 and 1971. WIQE agreed to train selected members of the school administration staff to implement education data and to maintain the schools in compliance by a statistical formula to be developed by WIQE out of this proposal. The agreement also called for a manual of operations that could be used, not only by the District of Columbia, but also by other school systems around the country to deal with the question of intradistrict finances and their distribution under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

The Board of Education and the school administration fully support WIQE's efforts to obtain outside funding for this work (Attachment 4). They will cooperate with WIQE in providing the information and data necessary for making the analyses needed for compliance. WIQE would like the aid of one file clerk, one typist, two statistical clerks, and one junior statistician from the school administration staff, as well as access to the administration's printing facilities. Students and other volunteers will be encouraged to work with WIQE on this project to gain practical experience.

It is imperative that this work begin as soon as feasible before the end of the 1971-72 school year. WIQE's position in respect to the court decrees and the school administration and board make it essential to seek outside funding in order for us to remain objective. Given funds from a non-biased source, WIQE will be free from special interests and other interference to do fair, unslanted research.

WIQE proposes to devise a plan that will satisfy all the requirements of the Wright decree from 1967 to 1971. The specific research plan is as follows:

I. Inventories

A. A chart showing special projects and programs, their funding sources, the number of people working on them, the number of children affected by them, and the benefits that accrued to the children as a result of having participated in them.

B. A chart showing the distribution of equipment and supplies.

C. A chart showing the basic subjects offered in junior and senior high schools.

D. A chart dealing with textbooks -- how many there are, where they are located, where they are needed, and whether or not they are up-to-date.

E. A chart on school libraries that will show books in libraries by school and by subject.

F. A chart showing the administrative and supervisory positions in the public schools by school and the cost of these positions to the entire school system.

G. A chart showing tuition grants by school, by location, and by cost.

II. Compliance Reports

A. Development in a timely fashion for the administration and the Board of Education of alternative compliance plans to form the basis for the system's compliance for the school year 1972-73 and use of the option indicated in section 4 of the May 25, 1971, order, preparing this as is necessary for approval of the court.

B. A compliance report to be submitted to the court on November 15, 1972.

C. Implementation during the summer months of 1972 of the compliance plan approved by the Board of Education so that all schools will be in compliance for the opening of the 1972-73 school year.

D. Development of a system to monitor the compliance of the school system over the 1972-73 school year.

III. Process

A. Involvement in the development of the charts and reports listed above of the appropriate representatives of the school administration, the Board of Education,

the Teachers' Union, and the community.

B. Development of the forms needed so that they can be distributed and the necessary information collected and recorded in timely fashion, i.e., prior to June, 1972.

C. Assumption of responsibility for the analysis of all data collected in connection with compliance.

It is becoming apparent by such indications as the Serrano v. Priest decision of August, 1971, by the California Supreme Court, requiring equal educational opportunities among school districts under the equal protection clause of the Fourteenth Amendment, that public scrutiny of public education is becoming more extensive and sophisticated. It is WIQE's contention that quality education, equal educational opportunity, and equal distribution of resources are interdependent. The Wright decisions in the District of Columbia are especially advanced in that they affect intradistrict financing of schools. For these reasons, the proposed research and analysis by WIQE will continue to have increasingly profound effects on the nation's schools. Several urban areas have shown an interest in our work toward this end.

The struggle for equal justice goes on forever. It must be pressed on every hand by the governed as well as the governors, the professionals as well as the non-professionals, and the educated as well as the not-so-educated.

Attachments

WASHINGTON INSTITUTE FOR QUALITY EDUCATION

PROPOSED BUDGET

June 1, 1972 - July 31, 1973

A. Salaries

Project Director	\$15,000
Administrative Assistant	9,500
Statistician	9,500
Secretary	7,200
Consultants (legal, graphic, statistical)	<u>7,000</u>
	\$48,200

B. Expenses

Rent	\$ 2,400
Telephone	1,500
Office supplies and equipment	3,000
Office equipment repairs and maintenance	500
Duplicating (Xerox)	1,800
Printing	2,500
Postage and messenger service	1,300
Research materials	1,000
Office maintenance (janitorial)	600
Travel and expenses	
local	500
out-of-town	4,000
Miscellaneous expenses	<u>500</u>
	\$19,600

TOTAL (A) plus (B)	\$67,800
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INTRADISTRICT SCHOOL FINANCING:

CHALLENGE OF THE FUTURE

Julius W. Hobson, Director

The Washington Institute for Quality Education
300 M Street, SW
Washington, D. C. 20024

May 19, 1972

WASHINGTON INSTITUTE FOR QUALITY EDUCATION

Directors:

Tina C. Lower, Chairman
Julius Hobson
Warren W. Morse
Henri A. Stines
James A. Washington
William A. Wendt

A PROPOSAL

D. C. EDUCATION SEMINARS

Purpose and Sponsorship:

WIQE will sponsor during the 1968-69 school year a series of seminars and conferences for the eleven newly elected School Board members and key groups in the D. C. educative process. Improved communications at all levels is necessary if the first elected School Board is to lay immediate groundwork for positive action in D. C. public education. The common feeling shared by present School Board members, students and educational professionals alike is one of general malaise. To overcome existing discouragement and inertia, the proposed conference series will emphasize the need for shared effort in striving toward recognized goals. New channels of communication need to develop, not to serve for grievances alone, but to evaluate ideas, clarify existing problems, share information and move toward effective action. The theme of all seminars will be: How can all concerned citizens cooperate to get the system moving in a positive direction?

Future seminars will be planned to include strategic members of the following groups: the newly elected School Board members, parents, students, teachers, administrators, principals and government and business officials. The first conference (outlined in this proposal) will include student representatives and all members of the newly elected School Board before the latter group formally convenes and its members assume public roles.

WIQE was incorporated to provide staff support to the Board of Education on a special project basis. Until such time as the D.C. public education system stabilizes--and provides a quality education to all students--such staff support is essential.

STUDENT-SCHOOL BOARD SEMINAR

Goals

1. To provide an opportunity for unpressured communication among all conference attendees -- in briefing new School Board members.
2. To provide an opportunity for the emergence of mutually acceptable understood goals in working toward improvement in D.C. public education.
3. To provide an opportunity for the development of a framework for continuing student communication with the Board.
4. To set a precedent for an annual student conference similar to student meetings in other states.
5. To develop new lines of communication among secondary school students.
6. To provide an opportunity for new Board members to work together informally prior to assuming official public roles.
7. To assist all participants in identifying priorities for change.

Conference Schedule (Tentative dates - December 27, 28, 29)

Day 1	5:00	General session -- welcome
	6:00	Dinner
	7:15	Workshops (11 groups)
	8:30	Dance -- small combo
Day 2	8:00	Breakfast
	9:30	Workshops (11 groups)
	12:00	Lunch
	2:00	Workshops (11 groups)
	4:00	Talent night preparation
	6:00	Dinner
	7:30	Talent Night (master of ceremonies and speaker: Oscar Brown, Jr.)

Day 3 8:00 Breakfast
 9:00 Workshops (11 groups)
 11:00 Church (optional)
 12:30 Lunch -- preparation for student reports
 2:00 General session -- moderator: Dr. Bert Phillips
 Student reports and conference evaluation
 4:00 Adjournment

Facilities -- The necessary criteria in choosing a suitable site will include:

1. Housing and food service for 150-160 persons
2. An environment conducive to full-time informal involvement. It is the unanimous opinion of group-work professionals consulted in preparation of this proposal that it is absolutely necessary to stage the conference in such a manner as to require complete commitment. Rather than holding the conference in familiar school buildings, it is considered essential to conduct the program in comfortable, pleasant and neutral surroundings where it is more likely that fresh open communication can develop. Therefore, it is necessary to take the conference outside of metropolitan Washington, to an easily accessible location.
3. Recreation, workshop and auditorium facilities.
4. Sufficient room for informal group discussions--for spontaneous interchange of ideas and experiences in a resident conference location.

Complete research has been completed on four locations: Airlie House, Warrenton, Virginia; National 4H Club Headquarters, Chevy Chase, Maryland; U.S. Naval Academy, Annapolis, Maryland (not available this year); and Bainbridge Training Center, Perryville, Maryland.

Orientation: (Prior to the conference)

For students

Contact group: Community Consultant Committee

In small groups, the selected students will have an opportunity to learn about the goals of the conference and about the responsibilities of the School Board. They will be asked to suggest discussion topics and ideas for developing a positive rather than a grievance approach during workshop sessions.

For the School Board

Resource Person: Dr. Preston Wilcox

Guidelines will be available so that members can familiarize themselves with existing policy on questions which students will raise. Discussion will center around Board responsibilities in policy formation versus program implementation and around the identification of related needs of junior and senior high school students.

For Moderators

Resource Person: Dr. Harland Randolph

Informal discussion will center around goals of conference, methods of handling workshop topics, and the needs of the participating groups.

Attendance

Students:

One from each of 28 junior high schools, three students (maximum one senior) from each of 13 high schools and 5 vocational schools would be: 1) nominated by a task force of students selected by each principal; 2) elected by the student body in an emergency assembly, called by the principal which would include as speakers one or more of the newly elected School Board members. These elected students would represent their school. Elections will be held within 8 school days after November 26. Collectively, students should represent a wide range of concern and have been active and articulate in dealing with social and educational problems ... 82. Also invited will be representatives from student groups whose membership extends beyond one school and whose goals are directed toward educational and social change (designated by the Community Consultant Committee) 14.

Observers:

Presidents of the following institutions -- American University, George Washington University, Georgetown University, D. C. Teachers College, Federal City College, Trinity College, Howard University, Catholic University, Washington Technical Institute	9
Young adult observers (selected by the Community Consultant Committee)	9
General resource: Dr. Leon Lessinger, Dr. Preston Wilcox, Dr. Edward Mead, Carl Holman, Rev. Tilden Edwards	5
Guest Observers (designated by IQE Board -- to include WTU and School Administration representation).....	15
Moderators for workshop discussion groups	15
WIQE Board members	7
Staff -- program manager and secretarial support	<u>4</u>
TOTAL	160

Endorsement

It is the understanding of WIQE that informal approval of this proposal by a majority of the newly elected Board of Education members will be granted on an individual basis by December 1, 1968. It is anticipated that the present Board will grant official sanction to the conference when requested by their successors.

Estimated Budget (Based on lower cost military facilities)

Per Person: Lodging	\$ 5	
Food	5	
Transportation	<u>7</u>	
	\$ 17 x 160	\$2700

Project Manager -- 2 mos. pt. time, 1 mo. full time	\$1400	
(personal expenses--trans., luncheon meetings)	100	\$1500
Secretarial Staff - part time		500
Guest speakers and moderators -		1300
(transportation, lodging, honoraria)		
Supplies and materials		700
(conference kits, printing, duplicating)		
Miscellaneous expenses		200
(stationery, telephone, meetings, etc.)		
		<hr/>
TOTAL		\$ 6900

PRELIMINARY DRAFT

Ch. 7 Washington: The Politics of Class and Race

by
Bruce L. R. Smith
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This is a preliminary draft of a chapter from The Politics of School Decentralization, by George R. LaNoue and myself, to be published by D. C. Heath & Co. Not for quotation or attribution.

Washington: the Politics of Class and Race

The central fact about the government of Washington D.C. is the city's status as national capitol. Throughout its history, Washington D.C. has been influenced by the special pressures and circumstances stemming from its status as the nation's capitol. The unusual governing arrangements which have evolved to administer the District's affairs must be understood in this light. There are no local elected officials in the District of Columbia,¹ few prizes of office, weak party structures, and limited citizen interest in local politics. The city is governed by a commissioner(mayor) council form of government, which was adopted by President London B. Johnson in 1967.² The commissioner (called the Mayor) and members of the council are appointed by the President and confirmed by the Senate. Since 1970 the District has elected a non-voting member of the House of Representatives and since 1964 the citizens of the District have voted in Presidential elections. Besides the formal institutional arrangements the status as capital city has an imprint on local politics in numerous ways.

A recurrent theme, in the District's political history is the concern with physical security and order at the seat of the Federal government. From the time in June 1783 when the Congress, then convened in the Pennsylvania State House, was besieged by a mutinous band of revolutionary militia agitating for overdue pay, the principle was firmly accepted by national officials that the national government ought to enjoy "an exclusive jurisdiction" at the seat of government and not be dependent on lesser jurisdictions for public order.³ The Federalist, Number 43, noted that "the indispensable necessity of complete authority at the seat of government, carries its own evidence with it. Without

it not only the public authority might be insulted and its proceedings interrupted with impunity; but a dependence of the members of the general government on the state comprehending the seat of government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to the other members of the confederacy." When the constitution was adopted, Article 1, Section 8 gave to Congress the authority

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by session of particular states and the acceptance of Congress, become the seat of government of the United States, and exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, drydocks, and other needful buildings.

The congress has been little inclined to relinquish its powers over District affairs despite continuing pressures for greater home rule for the District.⁴

Another thrust in Washington's political history has been the concern that the capital city be a "showcase" for the nation. This feeling, which has typically waxed and waned among national officials, has led to periodic efforts to make Washington the means to achieve important national objectives. In the early days of the republic there was a belief that the capitol should blossom into the economic, social, and cultural center of the nation--in the manner of London or Paris. When this dream foundered, new hopes arose for the leadership role of the city. In 1867 the Congress, dominated by the Radical Republicans, granted Negro suffrage in the District to make the District an example for the South. A great revitalization of the city's parks, streets, and public works was launched in 1871 under a new territorial form of local government, only to be abolished three years later when the price-tag for the public improvements was found greatly to exceed congressional intentions. In the modern period the relations between the Federal government and the District have grown more

complex as a large Federal bureaucracy deals with District officials along numerous functional lines. The House and Senate District of Columbia Committees have had a somewhat more difficult task in retaining their control over legislation affecting the city. Other substantive committies, in league with the Federal bureaucracy and clientele groups, have attempted to extend their jurisdiction in District matters.

But perhaps the most important effect of the Federal role is the peculiar and stunted character of local civic life and leadership patterns. Whatever else it implies, the Federal dominance has inhibited the full development of the local political system. The Congress exercises, actually and potentially, greater influence in District affairs than does the typical state legislature in municipal matters. It is not unknown for a builder, aggrieved by an adverse zoning decision, to appeal his case directly to the House District of Columbia Committee. The staff resources of Congress, greatly exceeding those of state legislatures, provide the opportunity for detailed interventions across the full range of District administration.⁵ The result is not merely the absence of electoral participation in local government but also the failure to develop local political elites. Participation is limited by the prevasive belief that any important development may simply be taken out of the hands of local leaders. No local political class has emerged because there are few prizes of electoral office or channels of advancement to potential national prominence within the local arena. This has continued despite the addition of the non-voting delegate to the House of Representatives and the creation of the office of mayor, although there have been efforts to build grass-roots political organizations around these offices. The "real" life of Washington to most district residents is still the activities of the Federal government. Power, money, ambition, the high stakes of national politics act as a magnet drawing the attention of the media and the citizenry.

Demographic trends highlight a further dimension of Washington's politics. The population has declined in each of the last two census periods, representing a decrease of 5.8 percent from 1950 to 1970. The decline was caused chiefly by out-migration of the white population, which dropped from 517,865 (64.5 percent of the total) in 1950 to 345,263 (45.2 percent of the total) in 1960 and to in 1970. Although the population of the District declined in the past two census periods, the Standard Metropolitan Statistical Area grew considerably in the same period.

Most of the suburban increase was in the white population. The 1970 census figures show a continued concentration of the metropolitan area black population in the central city, with the surrounding suburban population chiefly white.⁶ The remaining white population is made up of a large number of unmarried individuals and a growing older population, many military and diplomatic personnel who are reassigned at frequent intervals, and federal employees who are recruited from all over the country. These characteristics have reinforced the tendency toward a lack of involvement in the civic life of the District. The white elites with long-standing family ties in Washington have tended to be more deeply involved in the social and cultural life of the city than in its local politics.

Although the local politics of Washington have become increasingly dominated by blacks, sharp class differences within the black community should be noted. The character of black in-migration into the city has shifted, with a decline in the proportion of in-migrants coming from Maryland and Virginia and an increase in proportion from deep South states. The in-migration of the past two decades has added to the number of poor blacks in the District's population and helped to create the social problems evident in high crime rates, poor school achievement, health problems, and poverty. The established black elites, who live in the integrated and cosmopolitan world of Washington society, tend to be only peripherally related to the issues of local politics. Their interests, reflecting class variables, parallel those of the white elites rather than those of the black underclass. Thus the politics of Washington, D.C. reflects not merely a poor, largely black inner-city surrounded by middle-class white suburbs but also deep class divisions within black population

The School System

The school system of Washington D.C. is a focal point for many of the problems of class and race that affect the city. Whereas black did not become a majority in the city until the late 1950's, they became a majority of the school enrollment in 1951. In 1960, when the black population constituted 53.9 percent in the city the figure for school population was 79.5 percent. By 1970 about 94 percent of the school system's 150,000 students were black

Just as the racial shifts in the city's population became evident initially in the school system, the class issues which cut across racial lines first became dramatically apparent in the school system. The "tracking" system, unequal assignment of experienced teachers, and other resources to different schools and other factors have showed evidence not merely of inferior education resulting from racial segregation but also of segregation by class.

The recent history of the District's educational politics reflects the struggle, amid deteriorating conditions, to achieve racial integration, equality of opportunity, and quality education. The usual pathologies of inner-city education--absenteeism, low scores on standardized national tests, problems of teacher recruitment and motivation, class size--have been present, combined with the District's special problems. The demands on the school system have risen, as parents have seen improved educational opportunities as central to the strategy for breaking out of the cycle of poverty. Many black elites, however, have been sending their children to private schools. Sometimes this can go to extreme lengths; parents will judge that a private school is a "good school" on the most slender evidence. But the fears, expectations, and hopes of the complex mixture of Washington's black population form an important part of the reality of the city's educational politics.

Rapid change has been another component in Washington school politics. Change in the social composition of neighborhoods has resulted in the "tipping" of the schools from integrated to all-black, or from middle-class to low-income black. Judicial intervention has been another source of change. The famous Dunbar school, once an elite institution for black intelligensia, deteriorated within the course of several years after the Bolling v. Sharpe desegregation decision into one of the poorest schools in the District.⁷ The Hobson v. Hansen decision in 1967, which outlawed "tracking" in the District's schools, triggered major changes in many schools. Indeed, the changed climate in the District

of Columbia school system since the Second World War may be appreciated when one recalls the conclusion reached by a staff study for the President's Advisory Committee on Education in 1938:

In general, social and economic conditions in the District of Columbia are those recognized as favorable to schools and education. There are abundant indications that a relatively high average level of culture prevails, and a large proportion of the residents belong to social and occupational groups that place a high valuation upon education as a means of individual and social progress and welfare. Economic resources are ample to support a good school system. Moreover, because of the stability of the Federal government, these resources are not so susceptible to depressions as are the economic resources in other communities.⁸

In 1968 Congress adopted Public Law 90-292 which provided for an elected Board of Education for Washington, D.C. Previously the Congress had granted Federal District judges the authority to appoint members of the school board. The judges operated on an informal quota system in allocating seats on the school board. From 1906 through 1961 three of the nine board members were black and from 1962-1966 the^{black} appointees were increased to four. Declaring that "the education of their children as a municipal matter of primary and personal concern to the citizens of the community" and that "the school is a focal point of neighborhood and community activity," the act gave "the citizens of the nation's capitol a direct voice in the development and conduct of the public educational system." This represented the first time in the century that the citizen's of the District of Columbia participated in an electoral process on any aspect of local government. The energies "displaced" from a non-existent local politics into the educational arena has added intensity to battles over educational politics.

School Desegregation

The District of Columbia maintained a rigidly segregated school system prior to the Bolling v. Sharpe decision in May 1954. Although the school system in theory was administered under one Board of Education and Superintendent of

Schools, schools were in fact divided into Division 1 for white pupils and teachers and Division 2 for black pupils and teachers.⁹ A black assistant superintendent was responsible for supervising Division 2. There was little communication or exchange of activity between the two systems; even inter-racial athletic and forensic competition were forbidden. The black schools of Division 2 were inferior to the white. They had larger classes, more pupils per teacher, a poorer physical plant, a narrower range of vocational courses, and lower expenditures per pupil. In 1949 a survey of the District's school system (the Strayer report) exhaustively documented the failings of the segregated public schools.¹⁰

Friction over school segregation increased in the school system in the early 1950's as the expansion of the black population put pressure on white schools. The situation often arose of increasing enrollments at black schools while enrollment at neighboring white schools declined, leading to demands for the transfer of white schools to the black school system. Such a transfer would take place when the white school was so underpopulated that its maintenance as white could no longer be justified. Interest group activity and protests against segregation also began to mount in Washington D.C. in the early 50's, with the NAACP and the Urban League as leaders, along with such white groups as the American Friends Service Committee, the Anti-Defamation League of B'nai Brith, the Americans For Democratic Action, and numerous church councils. It is noteworthy that the impetus for change in segregation practices did not come from black members of the board of education or school employees. Many black teachers and principals had benefited from school segregation, and were ambivalent about major changes in school administration.

In late 1952 the U.S. Supreme Court agreed to hear Bolling v. Sharpe. With the Court action, and with the pace of civil rights activity increasing greatly in tempo, integration had begun to seem likely. The school board adopted a stance

of partial anticipation of integration and began some planning for the changes in administration that would necessarily follow. Public hearings were held in December 1952 but evoked only scant citizen interest. Thereafter the board did not assume a leadership role in preparing for the eventual transition to desegregation. Reluctance to offend the Congress, since southerners were heavily represented on the House and Senate District of Columbia committees, appeared to tie the board's hands.

On May 17, 1954, the Supreme Court handed down its historic decision on the school desegregation cases. The District Government moved swiftly, under White House pressure as well as the court order, to desegregate the District's schools. District commissioners met on May 18, and commissioner Spencer reported that President Eisenhower expected the District to serve as a "model" for the country in making an orderly and prompt transition to a desegregated school system.¹¹ The school board in late May adopted a plan which called for carrying out the court decision when school opened in September 1954, and the process of desegregation to be completed by the following September.

The integration of the District's schools was accomplished with surprisingly little opposition and almost no disorder. The NAACP and ADA criticized the school board's original plan as being too gradual, and one citizens association attempted to fight the desegregation effort in an abortive court action. In early October white students staged a brief strike at Anacostia and McKinnley High Schools which spread to several other schools. Within a few days, however, the effort ended and the schools were back to normal. By November 1954, over three-fourths of the District's 41,000 white students were attending schools with blacks and about two-thirds of the 64,000 black students attended schools with white students.¹²

The relative success in achieving a rapid and orderly integration of the District's schools, however, had unintended effects which over time served to intensify some of the school system's problems. As noted above, the Supreme

Court in Bolling v. Sharpe insisted on the neighborhood school concept which led to the rapid deterioration of such elite academic high schools as Dunbar into low income slum schools. More basic, perhaps, school desegregation accelerated the migration from the city to the suburb of large numbers of white middle-class families with school age children. A number of whites who remained in the District sought transfers for their children to schools with low black enrollment. Many white (and some middle-class blacks) parents transferred their children to private schools.¹³ The Passow Report, named for Professor A. Harry Passow of Columbia Teachers College, noted that 17 percent of the college-educated black parents and over a third of the college-educated white families sent their children to private and parochial schools. Many more parents white and black, had thought of private schools but were deterred for various reasons.¹⁴

In 1956 the school system embarked upon a new program, the track system, or "ability grouping", which was designed to allow students with similar academic achievement to work together, regardless of race. Under the track system, students were assigned to one of four curriculum tracks: honors, college preparatory, general, and basic. Under this device some integration existed in the honors and college preparatory tracks, but the general and basic tracks were made up of overwhelmingly black students from low-income families. The track system was implemented for all grades in the senior high schools in 1958, and shortly thereafter it was introduced into the elementary and Jr. high schools.¹⁵

The track system had numerous critics from the start, and opposition increased in the early 1960's as some of the consequences of tracking became evident. Some civil rights and education groups saw in the track system a new way of reinstating racial segregation in the schools, and of providing inferior education to most black students. The track system seemed undemocratic to critics who argued that ability grouping should be replaced by heterogeneous

grouping with individualized attention paid to every student.

In July 1966, civil rights activist Julius W. Hobson brought a class action suit against the Superintendent of Schools, the Board of Education and the District of Columbia judges (who then appointed the D.C. school board) on the grounds that the school system unconstitutionally deprived the poor and black school children of equal educational opportunities afforded to the white and more affluent students. Hobson contended that the inequality resulted from adherence to the neighborhood school concept, the track system, unequal faculty assignments to schools, and optional school zones for some students. Judge J. Skelly Wright of the U.S. Court of Appeals upheld Hobson in Hobson v. Hansen.¹⁶ In a lengthy decision the court ordered the Board of Education, among other things, to abolish the track system, develop a pupil assignment plan in accord with the court's directive and not based solely on the neighborhood school concept, provide transportation to children who wished to transfer from overcrowded to under-utilized schools, abolish the optional school zones and to achieve full faculty integration.

The Hobson v. Hansen Decision

The Hobson v. Hansen decision stands as a significant event in the history of public education in the District. This is not because the case decisively resolved a series of outstanding issues and set a clear course for the future evolution of the schools--for it did not achieve these purposes.¹⁷ Rather, the decision is important because it struggled with the conflicting objectives that marked the city's educational politics for the rest of the decade. The decision set the stage for the major battles that followed by highlighting the central issues. The leading figures in the city's educational politics from 1967-1971 also emerged from the case and its resulting impact on the schools.

Judge Wright's decision in Hobson v. Hansen might be summed up by saying that he sought three goals: desegregation, quality education, and equality of educational opportunity. Three dominant figures became publicly identified with each

of these goals. Judge Wright himself became the symbol for a continuing commitment to desegregation, the petitioner Julius Hobson became the symbol of equal opportunity and the spokesman for the black underclass, and Mrs. Anita Allen, newly appointed Board member, became symbolically linked with the cause of quality education. Mrs. Allen was part of the first D.C. school board with a black majority, and on July 1, 1970--the day she took office--she voted to carry out the Wright decree, and to order the then Superintendent Carl F. Hansen not to appeal the decision. Hansen resigned after the vote, and was followed by several weak successors which left a leadership vacuum in the school system. Mrs. Allen attempted to fill this vacuum through her leadership role in the school board but a collective body meeting only once a month could provide no effective vehicle for the exercise of vigorous executive authority. Hobson's role was mainly as gadfly and outside critic of the school system (though he served for one year on the school board after being elected in 1968 as the first elected local official in the District in over 100 years). He, too, was hampered in stimulating change in the schools because of the weakness of the school bureaucracy and the absence of a strong executive to respond to the pressures Hobson brought to bear on the system. It proved difficult to achieve simultaneously the three goals sought by the Wright decree, and, indeed, in^{the} conditions of the late 1960's the satisfactory achievement of any of the goals appeared beyond reach.

Although Hobson v. Hansen had sought desegregation--and by 1967 the concept of integration was widely accepted in the District and had few serious opponents--the decision helped to render the issue less important. The elimination of the track system contributed to the flight of white children from the school system. At the time of the decision the racial composition of the schools was approximately 92 percent black, and with a further dwindling of that number integration became for practical purposes unattainable. That integration had become a less pressing issue seemed to be symbolically confirmed when, a few months after the

Wright decision, the Board of Education released the findings of a comprehensive study of the D.C. schools conducted by Columbia Teachers College under the direction of Professor A. Harry Passow. The Passow Report in a section intitled "Integration in the District Schools," concluded that

When a school system is more than 90 percent pupils of one race, to speak in any ordinary sense of integration, desegregation or racial balance on a system-wide scale would be pointless. Devices that might further desegregation in other cities are now largely irrelevant in Washington. However difficult the present situation may be, the fundamental task of the District schools is the same of that for every other American school system: to provide for every child, whatever his race, education of a quality that will enable him to make the most of himself and to take his place as a free person in an open society.¹⁸

The Passow Report did recommend, however, various limited measures to reduce racial isolation in the District schools.¹⁹ But the prospects for any large-scale efforts to "mix" students from the District with students from the surrounding suburban schools in extracurricular or other programs did not seem promising. Merger of the District's schools with the school systems of the wider metropolitan Washington region to achieve racial balance seemed an unlikely prospect.²⁰ Strong opposition to busing could be anticipated even though the issue had not reached the crescendo of national concern later attained in the Nixon Administration's 1972 campaign against "forced busing". The special constitutional status of the District also complicated the question of metropolitan-wide consolidation of government functions.²¹

Decentralization

The decentralization issue, as it emerged in Washington, D.C. during the late 1960's, must be seen in the context of the general trends outlined above. Failure of desegregation efforts to produce quality education, especially for the majority of the District's poor black children, produced frustrations which were reflected in the decentralization movement. But, as in our other case-study cities, the impetus for decentralization also came from outside the system through Federal government and foundation efforts. Moynihan's reference to decentralization

was a bureaucratic ideology"²² invented by reform-minded professionals has relevance for Washington, D.C. The leverage of federal funding played a part in stimulating the drive for decentralization and wider citizen involvement in the city's school system.

Model School Division

In the first experiment in decentralization involving the District's schools was the Model School Division established by the Board of Education on June 17, 1964 in the ghetto area surrounding the Cardozo High School. The selection of the Cardozo area as the "target" for a concentrated community action program, including the Model School System as one major focus, grew out of studies conducted by Washington Action for Youth, an arm of the President's Committee on Juvenile Delinquency. The project was funded by the Office of Economic Opportunity and administered through the United Planning Organization set up in the area (though the federal funding later lapsed and the District school system had to assume the cost of the program.) Community participation was built into the program through a system of advisory boards, but the administration of the program has remained with an assistant superintendent of the D.C. school system designated as head of the Model School division. Despite some confusion in the division of authority among the local schools, the assistant superintendent in charge of the project, and the D.C. central office, the Model School Division has not developed along the lines of community control concepts. The project has remained an example of a centrally-administered experimental program with elements of administrative decentralization in program planning and operation.

Adams-Morgan

A more significant project for our purposes is the Adams-Morgan experiment launched in 1967 in the northwest section of the city. The Adams-Morgan neighborhood consists of approximately three hundred acres, with about 24,000 people who range from welfare recipients to upper income individuals. The majority since World War II have been black and poor, whereas before the war the area was primarily an exclusive white neighborhood with a black poverty pocket. The neighborhood "tipped" rapidly following the war, and about half of the large homes were converted to rooming and tenement houses serving a somewhat transient black population. About one-third of the population has remained white, although the population served by the Adams and Morgan elementary school--the neighborhood is named for the two elementary schools located there--is overwhelmingly black and poor.²³

The immediate origins of the Adams-Morgan program grew out of overcrowding and deteriorating physical conditions at the schools, which led a group of mothers from the neighborhood in the fall of 1965 to organize a protest meeting with school officials. This group subsequently formed an alliance with the Adams-Morgan Community Council, a neighborhood-based civic association established in 1959, to seek the improvement of the neighborhood schools. The Adams-Morgan Community Council, an organization dominated by whites and middle-class blacks, shifted the issue away from merely overcrowding and the poor physical condition of the school buildings to a concern with curriculum and educational philosophy. Liberal whites on the schools committee of the Adams-Morgan Community Council, including Christopher Jencks, now at the Harvard Graduate School of Education, and the two co-directors of the Institute for Policy Studies, Marcus Raskin and Arthur Waskow, and their wives were active members and played an important role in shaping the program which evolved at the Morgan school.

A group from the School's Committee meant with Carl F. Hansen, the D.C. Superintendent of Schools, in 1966 to discuss the idea of a community controlled

school (reportedly, no parents of Morgan children were present.)²⁵ The Antioch-Putney Graduate Center in Washington, D.C. appeared a logical choice as a potential university sponsor for the program since the director of the Center and director of the board of Antioch College had been attending meetings of the Schools Committee of the Adams-Morgan Community Council. Antioch College agreed to act as the sponsor for the project, with Marcus Raskin playing a leading role in arranging for Antioch's participation.

In the fall of 1966 members of the Adams-Morgan Community Councils School Committee plus Antioch staff drafted a proposal to include the Adams and Morgan schools in an experimental program under the administration of Antioch College. Superintendent Hansen asked for certain changes in the proposal, including the requirement that the project be limited to the Morgan School for the first year of operation and then, if successful, extended to the Adams School (in 1969 Adams became a separate community-controlled school with a community board of its own). In Spring 1967 a new proposal was developed, and on May 17, 1967 the D.C. Board approved the new proposal authorizing Antioch to assume the responsibilities for administering the Morgan School. ✓

Strains and stresses soon developed in the relationship between Antioch and the Adams-Morgan community. From the start many of the black parents with children in the Morgan School were uninterested in progressive curriculum reforms and held "traditional" views about what schools should do for children--children should learn to read, write, behave properly. Their main concerns had centered around overcrowding and the dilapidated physical condition of the building. The liberal curriculum reforms which were part of the Antioch proposal--open classroom, abolition of grading, team teaching, learning teams instead of regular classes--made many parents uneasy. Over the summer some members of the board of Antioch began to have second thoughts, and Antioch suggested postponing the demonstration project for one year. The Adams-Morgan Community Council

rejected the idea to postpone "and, somewhat reluctantly, Antioch agreed to begin the project."²⁶ Evening orientation sessions held in August between parents and the new Antioch teachers to explain the new curriculum and teaching methods produced more conflict than understanding, and left a high level of tension which carried over to the opening weeks of school.

In September the school principal, Kenneth W. Haskins, a former social worker hired by Antioch College, arrived to assume day-to-day management of the project. Elections were also held for the fifteen-member community school council (later called the Community Board). After a rocky start, and despite a decision by Antioch College to cut back on its administrative support for the project in the fall of 1967, the project survived and even achieved a limited success during the first year. Much of the credit should go to the strong leadership provided by Haskins and to his effective working alliance with Bishop Marie Reed, chairman of the elected community board. Haskin's leadership kept the various factions working together and kept the undercurrent of resentment over the loose structure and innovations in the school under control. The project received national publicity and was heralded as one of the most innovative school experiments in the country. Achievement test scores in reading showed some improvement in Morgan's first year, absenteeism was reported down and, as an index of student support for the school, the number of broken windows at the school fell sharply.

In April 1968, when it became clear that the arrangement with Antioch was unsatisfactory to all parties and could not be renewed, the Morgan Community Board presented a proposal to the D.C. Board of Education calling for community control over the Morgan School. The push for community control also meant the break-up of the alliance between the white liberals and the black parents of the Morgan school. Barbara Raskin, who served on the first Morgan Board with four other whites, has described her involvement with the school as being "like a bad love affair, a very passionate relationship which just didn't work out."²⁷

There were, according to her, "bad vibes for the white kids" after the riots of 1968 following the assassination of Martin Luther King.²⁸ A less charitable interpretation has been given by Robert Brown, the chairman in 1971 of the Morgan Board, who observed "these people (the white reformers) saw a black community they could perform an experiment on. And when it was not working out, they withdrew and left the whole thing to people who didn't know what it was suppose to do." Most of the approximately 20 white children who enrolled during 1967-68 in the Morgan School withdrew at the end of the school year and many enrolled in private schools the following year.

The Morgan Board's proposal for community control ran into difficulties in the summer of 1968. An opposition group, the Adams-Morgan Federation, sprang up out of the old Adams-Morgan Community Council (which had by now followed the pattern of the ephemeral neighborhood interest group and disappeared) to oppose the Morgan Community Board's proposal, and urged that the school be returned to the control of the D.C. Board of Education.²⁹ On June 26, 1968, the then

superintendent William R. Manning said at a press conference that the Morgan School Board would be reduced the following year to an "advisory" status and that the "serious division in the community" was one of the factors in his reasoning.³⁰ A group of about 70 Adams-Morgan residents staged a sit-in in his office later in the day. The atmosphere concerning the future of the Morgan experiment continued to heat up and on July 17, 1968, the D.C. Corporation Council, tentatively ruled that the Morgan School Board could not have increased independent powers as requested in the April 4 proposal. Earlier, on January 13, 1968, the Corporation Council had declared that "public officials or bodies may not, without statutory authorization, delegate their governmental powers" but had seemed to leave the door for decentralization experiments by also stating that "there is nothing in the statutes which would prevent the Board of Education from seeking and acting upon the opinions, views, advice, and recommendations of

citizen groups of an advisory nature, so long as the ultimate authority over educational matters in the public school system remained in the Board of Education." The Corporation Council reasoned in its July opinion that the specific requests for physical autonomy and complete control over personnel were powers that the D.C. Board of Education itself did not fully possess and therefore could not delegate.

More serious, perhaps, the D.C. Board was split over the wisdom of accepting the fragmentation of authority that seemed to be implied in the Morgan proposal. One view, represented forcefully by Mrs. Anita Allen, was that community control was counterproductive to the goal of improving the education of black children. Since there was, in effect, community control of the whole district, why bother with tiny fragments of power over individual schools or sub-districts within the system? This position was unacceptable to the Morgan School activists who did not trust the central leadership even if it were black. The tradition of class divisions within the black community, and the history of an imposed black leadership lacking any clear linkage at the "grass roots" level, helped to make the opposing positions irreconcilable.

The intense pressures from the Morgan community ultimately forced the D.C. Board of Education to acquiesce to the Morgan demands. A meeting of the D.C. Board of Education held at the Morgan school on July 18, 1968 at which a crowd reportedly in excess of 350 Morgan residents were in attendance proved to be the turning point. The following day a fuzzy compromise document was issued-- either from the Superintendent's office or prepared by the Morgan activists themselves and acquiesced in by the Superintendent and D.C. Board-- in which the Morgan Board was, in effect, granted its demands within a framework of delegated powers and subject vaguely to the ultimate authority of the D.C. Board of Education.³¹ The Morgan Board thus won community control but in the

process paid a price: the D.C. Board and the school system did not identify with and felt no stake in the success of the Morgan project.

The philosophy of Haskins--now the pivotal figure in the Morgan experiment--clearly moved in the direction of the separatist and nationalist tradition of black political thought in America. His strategy was to attract additional federal funding and other sources of funds to build a base that would be useful in a variety of ways. Beyond a superior educational facility, the community school would serve as an employment agency, a political machine, the social center of the neighborhood, and a center for job training and useful skills.

One problem with experiments such as Morgan is their vulnerability to loss of key personnel. In the first two years of the Morgan project, with Haskins as principal and the experiment having been singled out by U.S. Education Commissioner Harold Howe for praise, the school succeeded in attracting federal government grants and private foundation monies on a substantial scale.³² Although the evidence at the increase funding resulted in educational improvement is inconclusive, what does seem to have happened in the first two years of the experiment, in the fashion of a Hawthorne effect, is that a number of Morgan parents enjoyed for a time a sense of efficacy and renewed hope that their children would get a better start in life. One may possibly argue that the groundwork had been laid for an eventual success in educational terms although no serious evaluation was conducted. The favorable image that Morgan enjoyed was largely the result of energetic self-promotion by Haskins and enthusiastic support from like-minded reformers with little knowledge of the Morgan situation.

Haskins left the Morgan school in June 1969 to take a fellowship at the Harvard School of Education. A few months later, Bishop Marie Reed, local community leader and president of the Morgan Community Board, died. With Haskins and Reed gone, the difficulties mounted and whatever gains had been achieved were largely lost. A new principal, John Anthony, was named to succeed Haskins

in the Fall of 1969. Anthony was essentially uninterested in Haskin's curriculum reforms, which he largely abandoned, while at the same time he sought to build on Haskin's ideas of a power base and patronage center. Bitterness and dissention grew in the Morgan Board. Complaints about lack of educational achievement of the Morgan children plus personal fueds constituted the issues which increasingly divided the Board.³⁸ As an example of the strife within the Board, Mrs. Jeanne Walton, Board Treasurer, delivered a scathing attack on principal John Anthony and other members of the Board on March 25, 1970 at a meeting of the Board and staff of the Morgan school. She began by noting that:

"there are many enemies of community control of schools. Some of them are elsewhere in this country: some are in Washington D.C.: some are in this community: but the most dangerous ones are sitting on this board. Many of us have known for some time what has been going on. We have hesitated to speak out, before because we did not want to do anything that would be damaging to community control and concepts throughout the nation and in practice here at the Morgan Community School. But, it has become increasingly obvious that by our silence we are not protecting community control in the Morgan Community School. We are protecting ignorance, malaciousness and perfidy. We are protecting greed, envy, and personal ambition."

She went on to declare that "many people on this board do not want open meetings because they do not want the staff and the community to know what they're about." After cataloguing a long list of grievances, Mrs. Walton concluded:

"the vice-chairman of this board, the principal and their allies continually conspire to control the school and to keep information from other board members, including the chairman...At various times this board has had discussions about getting Mrs. Butler, Mrs. Weber, and myself off the Board. Some Board members feel, rightly so, that the three of us are obstacles to them in their mad, headlong rush for power....Instead of trying to broaden the base of community participation in seeking to start new programs, the members of this Board are engaged in constant manipulation to control, harass, intimidate, and punish staff members and in intrigues to feather their own nests. This Board pushed through a change in the by-laws so that they could hire Mary Finch as bookkeeper. Mrs. Finch was totally incompetent in this role...Certain members of this Board and John Anthony dreamed up a scheme to use Follow-Through funds and Follow-Through staff to run a restuarant...The person that should be terminated is John Anthony. He takes no responsibility whatsoever for the administration of this school...He has no idea of the requirements of his job...Now, the bitterness and envy and

corruption of some of the members of this board have touched our staff and our children. Interns are frightened, anxious, insecure. Teachers are angry and depressed, and ready to resign, children are tense and belligerent.³⁴ (Statement of Jeanne Walton, member of the Morgan Community School Board, at a meeting of the Board and staff of the Morgan Community School, Wednesday March 25, 1970, mimeo).

The feuding on the Morgan Board was climaxed by the bitter campaign in May 1970 board elections. The principal, John Anthony, and the community teaching aides actively campaigned for the winning slate of educational "conservatives" against the "progressives." Among the defeated members of a "progressive" slate was the wife of George Wiley, leader of the National Welfare Rights Organization. The election appeared to be in the venerable American tradition of "vote early, vote often." There was suspicion of widespread irregularity in election administration.³⁵ Since the estimated eligible electorate was 10,000, and there were no registration rolls or proof of eligibility required at the several polling places, the chances for abuses were considerable. One faction reportedly rounded up a group of Dupont Circle "hippies" to vote for its cause. This maneuver was reportedly more than neutralized by the opposition's imaginative commandeering of Howard University students to vote for its slate. The election completed the transformation of the Morgan school from one of the most educationally innovative in the nation to one of the most educationally traditional. "The black mamas triumphed," as one D.C. school official characterized the situation, "and the reformers fled."³⁶

Thereafter, the school has been run as a tight oligarchy built around the Board and the school principal. Participation has been generally limited to those parents who are on the Board or who are paid to work in a teaching aide or other capacity for the school. On several occasions the Special Projects Division of the D.C. Board of Education considered dissolving the Morgan experiment and assuming direct control over the school, but on each occasion drew back from the move. There has been a fear of tangling with a group that has shown formidable organizing capacities, and a measure of indifference to the fate

of the project. Stepping into the situation might provoke a lot of dirty trouble, and would offer few gains to offset the costs involved.

By most criteria, the Morgan experiment has not been a success. The hope to stimulate greatly parental participation in the school has not been realized. Few parents even visit the school aside from those who are employed there. Electoral participation has varied from a high of 4% to a low of less than 2% of the potential voters. In the last Board election, in May 1971, only 137 neighborhood residents voted out of the potential 10,000 electorate. The turnover on the Morgan Community Board has been high, with only a small activist group maintaining any continuous involvement with the school. The turnover from 1968-69 Board to that of 1969-70 was 69%, and from 1969-70 to 1970-71 it was 50%.³⁷ The squabbles within the community have even prevented agreement on a site for a new school which has been promised the community for some years.

Second, educational performance has slid back to the standards of most schools in poor neighborhoods. Morgan's average scores on reading achievement tests, after the increases in the spring of 1968, have dropped for sixth graders to where they usually had been--about two years below norms.³⁸ Scores for third and fourth graders, the other groups regularly tested, held better until September 1970, when tests were given during the first week of the term. The results for all grades were low but the average grade for fourth graders was eight months lower than the average reported for the same children when they were in third grade a year before. The statistics kept on broken windows at Morgan and its annex, which were once cited as an indication of the gains under community control, have showed a reversal of the trend. In 1966-67, before community control, the D.C. school system's Office of Building and Grounds recorded 200 broken windows at the Morgan school and its annex: in 1967-68, the first year of community control, there were 194 broken windows; in 1969-70 the figure fell to 136 broken windows; but for the first eleven months of 1970-71

there were 579 broken windows.³⁹ No reliable figures have been kept on losses due to theft and vandalism, but the problems are so serious that most moveable equipment is kept overnight in a locked storeroom. Student absenteeism averages about 10 percent daily, better than some schools in poor neighborhoods, but slightly above the city-wide average for elementary schools. Teacher turnover has been usually high, and many of the newer teachers, who were hired by the Morgan Board on a recruiting trip through the South, are themselves deficient in written and spoken English.

Third, issues of financial accountability and propriety have arisen with respect to the administration of the Morgan project. U.S. Comptroller General Elmer B. Staats has observed, in a discussion revenue sharing, that only a limited number of states have minimally acceptable audit capacities.⁴⁰ It is perhaps hardly surprising that a community board dominated by non-professionals and with limited staff should have difficulty in developing an effective system of financial management. But that there has been an absence of effective fiscal management seems beyond dispute. The difficulties have ranged from minor nepotism (the principal's wife being on the payroll as a secretary) to patronage (doling out jobs as teachers aides to the faithful) to irregularity (failure to hold elections for the Policy Advisory Committee of the Follow-Through Program as specified under federal regulations) to conflict-of-interest (the former Morgan Board chairman hiring Afram Associates to "help strengthen parent involvement" and being hired a few weeks later by Afram as "a parent stimulator" at \$6,500 a year) to mismanagement (the principal drawing night school pay for work not performed and the hiring of fifteen community interns who were never authorized in the budget provided by the D.C. school system).⁴¹ The unauthorized hiring of the fifteen interns, perhaps the most spectacular of the irregularities in the project's administration that came to light, was regarded by higher ranking D.C. school officials as equally the fault of headquarters and its weak system of fiscal controls for allowing the unauthorized

to get on the payroll in the first place.

D.C. Superintendent of Schools Hugh J. Scott decided in the spring of 1972, despite the difficulties with the project, that the Morgan school experiment would continue for the following school year but would operate "within a framework of more effective centralized budget control."⁴² One should perhaps guard against overgeneralization on the basis of the Morgan experiment. Just as a "success" at Morgan would not have shown the general utility of the community control concept in urban education, the lack of success might be argued as not proving much either. The Morgan experiment faced many problems and it is difficult to tell which of its many difficulties were critical. Yet in some respects--in funding, favorable media attention, a high level of outside interest--the conditions at Morgan were favorable and not easily duplicable elsewhere. The Morgan experiment highlights the extreme difficulty of achieving in poor neighborhoods the major goals sought by community control--greater parental participation and community involvement in the school, improved education, and accountability to a broad cross-section of the community.

The Anacostia Community School

The Anacostia Community School Project, which grew out of a March 1968 Presidential message, became the District's largest experiment in school decentralization. The Anacostia Project, located in the Southeast section of Washington, D.C. and physically separated from the rest of the city by the Anacostia River, included eight elementary schools and three secondary schools with an approximate enrollment of 13,000 students. In a number of ways the experience of the Anacostia Project paralleled, only on a larger scale, the evolution of the Morgan Project, and its fate told a similar story. Several features of the Anacostia effort, however, suggest an additional line of analysis.

Like the Adams-Morgan area, the Anacostia section has a predominately black population, characterized by poverty, high rates of unemployment, inadequate social services, and high transiency rates and low pupil achievement in the

schools. But, unlike Morgan, Anacostia has some black middle-class children in the schools and groups of black middle-class parents who have not completely abandoned the public school system. Anacostia also is something of a "natural" community. Cut off from the rest of the city by the Anacostia River, and having a population estimated to be some 130,000, the Anacostia area has enjoyed some measure of organizational life in the community, a network of churches and other voluntary associations, and an economic base. These factors helped to give the Anacostia project an advantage over Morgan in the range and quality of community leadership that could be drawn into the effort. In fact, the Anacostia Project has a much higher calibre of leadership than did Morgan on both the community board and school administrative staff sides, and the project enjoyed a relatively high degree of stability and continuity in its leadership.

The most important feature, however, is the direct involvement of the federal government in the creation, funding, and management of the effort. Although a recurrent theme in this book is the role of the federal government in seeking change at the local level, the Anacostia Project is unique among our case studies in the degree of federal involvement it illustrates. As such, the Anacostia case offers a sobering glimpse of the difficulties involved in a federally created and managed project at the neighborhood level.

The Anacostia Project had its origins in October 1967 when an inter-agency memorandum was circulated to a number of federal bureaus calling for new ideas for a dramatic demonstration project in urban education. In August 1967, President Johnson had launched the Fort Lincoln Project in Washington, D.C. as the start of a national program of surplus land development in the cities.⁴³ President Johnson had the idea that Washington in a number of program areas could be a model for the nation in coping with urban ills and he had instructed his aides to direct attention to this possibility. The preliminary screening of ideas produced in tentative outline what became the Anacostia Plan along with numerous other initiatives in urban education. Subsequently, on November

1, 1967, a working group under the chairmanship of Harold Howe, Commissioner of Education, and with James Gaither of the White House staff as a member, was created to sift the ideas, refine them, and come up with a workable plan. The staff work was done mostly by a small group of officials in the Office of Education's Bureau of Elementary and Secondary Education, but there was constant White House pressure for rapid progress.

As in other areas of domestic policy it was President Johnson's "style" to reach into the bureaucracy, skim off good ideas, and make them his own priorities. Sometimes this style produced policy ideas that were inadequately staffed out at the working levels of government. The Anacostia Project was such an idea. The first public suggestion of the plan came in a special Presidential message of January 1967 on the problems of the District of Columbia. There was at this time no clear idea of the magnitude of the effort, its exact objectives, what area would be chosen for the demonstration, or how the project would be administered. The problems were still not worked out when the President formally launched the program in a public message on the District of Columbia on March 13, 1968. President Johnson proposed "a major model school experiment in the District, embracing a significant area of the city." To support the program the President included a budget request for \$10 million in the 1969 budget for the Office of Education. With this level of support envisaged annually for the next five years, the effort was to become "a beacon to the school systems in the other cities of the nation." The President's message was filled with the ideology of participation and the virtues of the community school concept.

In April the OE officials, including consultant Mario Fantini, then of the Ford Foundation and an influential spokesman for the decentralization effort underway at the time in New York's Ocean Hill Brownsville, selected Anacostia in consultation with local leaders as the site for the project. The effort was

orchestrated by OE officials with the D.C. school officials and community spokesman playing a minor role. The extent to which the Federal government directed the effort is indicated by the tone and tenor of a memorandum from OE official John F. Hughes to Commissioner of Education Harold Howe of April 1968:

"...it is improtant that Manning (the D.C. Superintendent of Schools) make the right moves between now and the school board meeting of April 25. I have urged Fantini to put the proposal in clear terms in writing so that the Board will know precisely what is proposed. Also, I think it important that Manning touch bases with the important leaders and organizations in D.C. in regard to the Nickens and Fantini appointments to be sure there is no reaction.

I have advised Superintendent Manning in these terms and he seems agreeable. However, I think it would be improtant for you to continue the holding of his hand during the coming week to be sure all the proper moves are made."⁴⁵

The D. C. Board of Education made the final decision in selecting Anacostia as the site for the demonstration project at tis April 25, 1968 meeting. It would be mistaken to suggest that there was no genuine involvement of local school officials, the local government of Mayor Walter Washington, or D.C. community groups--there were some efforts to make Anacostia a joint enterprise--but the federal role in the project's inception was dominant.

The project got underway in the summer of 1968 with a series of intensive workshops involving staff, outside consultants, high school students, parents and other community residents. Out of this grew 24 proposals that formed the basis for the first year's experinece in the project. The initial thrust of the effort was toward improved reading and the training of community residents to assist with the teaching of reading, and toward increased community participation in the school through the development of policy-making community boards. Difficulties began to develop, however, before the project was scarcely underway. Congress balked at the magnitude of funding requested for the project and eventually scaled down the \$10 million request to a \$1 million appropriation. U.S. Education Commissioner Harold Howe, at the first signs of trouble, had

written to Congressman William Natcher (Democrat, Kentucky), Chairman of the House District Committee, to assure him that the project "meets all of the usual review requirements of the Office of Education including criteria for evaluating educational significance and effectiveness, and review by a panel of specialists who are not federal employees..." and "...will adhere to all legal and administrative requirements to assure that the project meets all quality standards which are applied to research and demonstration projects approved for funding under Title IV of the ESEA."⁴⁶ But Natcher and Congress were unconvinced, and in scaling the project down to this degree called into question a critical assumption on which the planning had been proceeding. Some delays were occasioned in the start of the project, but the first phase of the OE grant was awarded to the Anacostia Community School Council in February 1969 for the reading program and a community participation component was added in June 1969. The delay in the transfer of federal funds, which occasioned a late start in the school year for some phases of the effort and a year's postponement for others, was only a harbinger of later difficulties.

Throughout its history the Anacostia Project suffered from the lack of consistent attention from Federal officials and frequent changes in key personnel. The project was shifted from OE's Bureau of Elementary and Secondary Education to OE's National Center for Educational Research and Development and finally to a new Experimental Schools Division. In the process Anacostia school officials had to deal with new people from the Office of Education and new conceptions of educational policy, not to mention the shifts in policy orientation and personnel that began when the Nixon administration assumed office in 1969. The results were damaging for the project--inattention from federal officials, uncertainty in levels of funding, unanswered phone calls, confusion, and an assortment of other administrative difficulties plagued the project. Delays in getting federal funding for monies already appropriated were common.

Communication between the federal government, the D.C. Board of Education, and the Anacostia project management was deficient. The appropriation for the project jumped 100 percent for fiscal 1971, for example, to the surprise of local officials. Hasty improvisations in program design resulted. No stable expectations were created, and the Federal government's intervention was enough to prevent real autonomy at the project level but not enough to supply real leadership.

Finally, on Oct. 13, 1971, Robert B. Binswanger of the Office of Education wrote to William S. Rice, director of the Anacostia Project to announce that the project would be terminated at the completion of the school year. Binswanger, in an earlier internal memorandum which provided the basis for the decision, laid equal blame on the Anacostia Project Offices, the D.C. Headquarters, and the Office of Education for the project's failure. In reviewing the evidence, he noted,

"...It becomes increasingly evident that all three sources of responsibility share in the failure of the project to meet its objectives...the role of the Office of Education vis-a-vis the Anacostia Project was never sharply defined or precisely clarified... A form of dependency relationship was established which made it extremely difficult for the project to act independently. Overprotection crippled the evolution of responsibility to such a degree that when faced with the actual decision-making for major items the Anacostia Project has been left without the capacity to act. The Office of Education is at fault for the general administration of the Anacostia Project."

He criticized the D.C. school system for "a hands-off-policy by both central administration and board. And thus the Anacostia Project or items directly related to it were rarely a topic for discussion at the highest councils of the public school system. It is clear that the central administration failed to provide the project with the support and assistance that it required..." He relied heavily on an HEW audit (which stated that \$118,777 of project funds had been misappropriated in the six months audit period) as evidence of lack of effective management in the Anacostia Project Offices. The memorandum concluded

that

"the original mandate of the Anacostia Project is no longer viable and...continued support of the project would not be an appropriate, productive, or intelligent disbursement of public monies. The failure of the project to produce demonstrable results in spite of the funds expended (approximately \$4 million dollars) in the time involved gives little cause to believe that continuing the effort will effect successful achievement of the objectives."⁴⁷

The federal government's action in terminating the project was in many ways like the original decision to launch the venture: sudden, based on unrealistic expectations, inadequately planned, stimulated by currently fashionable bureaucratic ideologies, and lacking in thorough knowledge of local conditions. The "evaluations" relied upon to justify the decision did not always prove what OE claimed and some of the implicit assumptions of what kind of evidence would be required to justify continuation of the project were highly unreasonable. Yet on the central points the OE decision was hard to challenge. The case that could be made for the project's continuation was weak. As to participation, there was little evidence of substantial parent involvement in the schools. Aside from the 200 paid community reading assistants, few parents visited the schools and took an active part in the management of the schools. Electoral participation was low. Despite an intensive campaign in the fall of 1969 to register voters, publicize the community school board elections, and create widespread community awareness of the project, the turnout was disappointing--only 437 parents and community residents voted after 6,005 had been registered by the Westinghouse Learning Corporation, the contractor that organized the elections. This amounted to a turnout of 6-7% of the registered electorate after a saturation campaign conducted by the elections contractor (which included press releases, radio broadcasts, the distribution of 60,000 flyers and notices, the hiring of high-school students as community canvassers). This compares with the turnout of approximately 10 percent of the registered voters in the area for the 1969 D.C. school board elections and 20 percent of the registered voters in Ward 8 (the

larger area in which the Anacostia Project is located) in the 1964 presidential election. The large number of candidates (392) running for a total number of 241 school board positions on the areawide board and individual school boards undoubtedly helped to confuse the voters. The basic trends of low turnout in small constituency elections with low public visibility, however, would likely have not been greatly altered by simpler electoral procedures.

The participation that was hoped for from the elected boards did not emerge. The boards elected in November 1969 underwent a process of atrophy as attendance at meetings dwindled, fewer meetings were held, and the core group of activists shrank in numbers. The ambiguities in the division of responsibilities between the areawide board, the local school boards, and the project's administrative staff were never satisfactorily resolved. The experience with the participation side of the effort proved so discouraging that no elections were held in 1970 even though the various board members had been elected only for one year terms. In November 1971, after the Office of Education had announced its termination of federal funds, elections were again held as part of a strategy to reverse the OE decision on appeal and convince the federal officials that a broad base of popular support existed in the community for the project. Despite the fact that the voting age was lowered to 16 and over, and 100 students were hired as "roving ballot boxes" to go around the neighborhood to collect votes, the turnout was again light. There was also a strong suspicion of irregularity in election administration. At any rate, the Office of Education remained unmoved.

Second, the project could present only slender evidence that student achievement had significantly improved. There was some slight indication that the "cumulative-deficit" phenomenon sometimes observed in ghetto children had been partially reversed among fifth graders, and comprehensive reading scores for all grades showed slight gains. But the data were limited and selective, and did not constitute a powerful case.

Third, the project was unable to demonstrate that it had established an effective system of financial accountability. Although there was no indication of the spectacular breaches of the norms of fiscal regularity characteristic of the Morgan Project, Anacostia's management lacked professionalism in budgetary matters and gave no indication that it could meet minimum standards of financial accountability in the foreseeable future. The HEW audit showing a misappropriation of \$118,777 of federal funds for non-project purposes for a 6 month's period in 1971 suggested the extent of the difficulties. The dependent relationship that prevented the development of meaningful autonomy and strong management was illustrated to the last when Anacostia had to ask for OE guidance in the preparation of its appeal to the U.S. Commissioner of Education, Sidney Marland Jr.

In December 1971, Commissioner Marland upheld Biswanger and the first major school demonstration project officially came to an end.⁴⁸ Marland compromised, however, to the extent of a vague promise that new funds would be available for another effort focusing on the same area under "considerably more supervision from the Office of Education and the D.C. school system."⁴⁹ The current Anacostia community school board could play an active role in planning and giving support to the new project, but for the new effort, which Marland suggested might be the first of forty or fifty such efforts in other cities around the nation, "local involvement is the word rather than governance."⁵⁰ The fate of the 200 paraprofessionals in the project was unresolved, as was the exact operating responsibilities of the Office of Education and the D.C. school system.

Despite much talk of "tighter controls" from the Office of Education and "strong management" by the D.C. school system, which would yet permit "local involvement," there was little indication that the basic problems with a special Federal effort of this kind were resolved. While terminating the project, the OE officials nevertheless believed, in the words of Biswanger's staff memorandum of September 30, 1971, that the effort was "conceptually sound, well-planned and a

product of tremendous community interaction." Hence the lesson was drawn that the same concept should be tried again, in Anacostia and elsewhere, only with new personnel, more vigor, and larger funding. The reality is rather different: the goals of the project were too grandiose, the basic conception vague and unclear, and the inherent difficulties of a direct federal managerial role in a neighborhood level project were not appreciated.

Equalization

Decentralization emerged as an issue in Washington, D.C. at a time when rising frustration over the failure of desegregation efforts to produce quality education, especially for the poor and black students. In turn, as disillusionment grew with decentralization as a reform strategy, demands for equality in educational expenditures emerged as a major new issue. The new issue has served to weaken further the appeal of decentralization as an educational strategy, for strong central authority in the school system has seemed necessary to implement the requirements of equalization in funding.

A suit brought by Julius W. Hobson, the original plaintiff in the class action which led to the 1967 Hobson v. Hansen decision, crystallized the issue in the District. The action was brought as an amended motion for both further relief and enforcement of the original Hobson v. Hanson decree. The decision, handed down on May 25, 1971 by Judge Wright, was one of the first in a series of significant equal protection cases concerning public school finance.⁵¹ Citing the dictum that "figures speak and when they do, courts listen," Judge Wright found that figures on pupil-teacher ratios, average teacher costs, and teacher expenditures per pupil in the predominantly white area of the city, west of Rock Creek Park as compared to the area east of the Park "make out a compelling prima facie case that the District of Columbia school system operates discriminatorily along racial and socio-economic lines."⁵² The court directed that "per pupil expenditures for all teacher's salaries and benefits...shall not deviate by more

than 5 per cent from the mean...at all elementary schools in the District of Columbia school system." The standard of per pupil expenditures for teachers' salaries was used because the court found that it was impossible to equalize all school costs. Some variations in expenditures, relating to maintenance cost, the age and size of school plants and their cost of operations, rates of vandalism, and other factors, were truly beyond the control of the school system's management. The court ordered an elaborate system of reporting to establish compliance with its decree.

The ruling illustrates the complexities in the effort to achieve equality even within a single district. The concept of equality is difficult to define satisfactorily. Recognizing this fact, the decision left room for exceptions to the standards in the case of educationally deprived, mentally retarded, physically handicapped, or other "exceptional" students.⁵³ In the course of the lengthy process of argument and exchange of memoranda by counsel, Judge Wright repeatedly found himself in the position of having to arbitrate difficult questions of statistical interpretation, which he sometimes resolved by "common sense" or by reverting to "straight forward moral and constitutional arithmetic."⁵⁴ Unfortunately, "straightforward moral and constitutional arithmetic" does not always provide clear and unambiguous answers to difficult policy issues. The decision posed the problem of "leveling down" as against "leveling up": would the poorer schools in the district be brought up to the level of the best schools, or would the equalizing process merely succeed in hurting the best schools? If the latter, would the flight of the remaining middle-class pupils from the public schools be hastened? There is little reason to assume that the Congress or the District of Columbia city government would appropriate more funds for education so that the quality of the poorer schools could be upgraded without harm to the better schools. The possibility also exists that the equalizing requirement, on the assumption of fixed resources, could result in less compensatory funding to the most critically needy schools.

The opening of the school year in September 1971 was delayed by one week as the school administration sought to comply with the court order. After preliminary projections of the District's elementary school enrollment, the administration shifted some three hundred teachers within the system in an effort to achieve compliance. However, sharp disparities appeared between projected and actual enrollment when complete figures became available later in the fall. Dropouts in the middle of the school year further confused matters so that the teacher reassignments at the start of the schoolyear did not achieve the intended effect. A review of the situation in February 1972 showed that more than half of the District's 136 elementary schools were not in compliance with the court order.⁵⁵ In light of this evidence Julius Hobson was threatening to return to court for a finding of contempt, and to ask that the operation of the school system be turned over to an outside "master" or "czar" who would "run everything until it is in compliance."⁵⁶ School officials contended that it was impossible to keep the system constantly in compliance because too many changes were taking place. High-ranking school officials talked vaguely of a "permanant floating pool" of experienced teachers who would rotate in and out of schools across the city as one possible solution--hardly, it would seem, an ideal educational outcome. In the spring of 1972 the ultimate effect of the equalizing order could not be clearly foreseen. Hobson and school officials were attempting to work out an acceptable plan of compliance as an alternative to new court action.

Although the full impact of equalization was unclear, the consequences as of spring 1972 suggested certain tentative observations. First, the order will likely have the effect of strengthening central management's role in the school system. Judge Wright's decision chided school officials for deficiencies in the information system required for effective management, and the data requirements implied by the court order seemed likely to give the Superintendent new leverage to implement his priorities. The teacher reassignments implied by

the court order weaken the individual principal's role in personnel matters and strengthen that of the superintendent. Community preferences at the neighborhood and the individual school levels will become less important as the energies of central administration are devoted to devising standard District-wide guidelines on pupil-teacher ratios and resource allocation. In the view of Julius Hobson,

the equalizing thrust might put an end to the talk of community control, for only a strong central administration can devise and implement a workable program of allocating school resources equally across the District. Although he often railed against "unresponsive administrators," Hobson always believed that the function of citizen involvement was to force the professionals to do a better job. "I wouldn't know a good curriculum is it came up and hit me in the eye," he has said.⁵⁷ In theory, equalization could be combined with local control (or widened community participation). But in practice fiscal control and policy control have usually not been easily separable. As state legislatures around the country attempt to equalize fiscal disparities between school districts, for example, it is likely that the state's role as a educational policy-maker will become more important. As the arena of the conflict widens, the players in the game change. Professional educators, teachers unions, and other established interest groups will be the critical actors, with less of a role for neighborhood-level citizen groups.

Second, the judicial intervention in the school finance issue may lead to a series of legal and constitutional issues of even greater complexity than the "reapportionment thicket" of a decade ago. Judge Wright wrote a careful opinion rejecting plaintiffs' original contention that all school costs should be equalized on a per pupil basis, but this and other rulings across the country seemed to provide a basis for further challenges both as to the scope of public expenditures requiring equality and the geographical unit involved. Quality could be asked of other school costs, of public services other than education, and

this would pose formidable problems for judicial judgment. "Equality" could require compensatory treatment for the poor taxpayer or special privileges for the rich taxpayer under various reasonable assumptions. The schools of the District of Columbia might be considered to require equality with the outlying suburbs in a metropolitan system of school finance.

The effect of the equality rulings on past desegregation efforts remained one of the most difficult questions. Judge Wright was prominently identified with the cause of desegregation since the original Hobson v. Hansen decision, but now, paradoxically, might his new ruling signal the abandonment of desegregation in favor of fiscal equality between segregated schools? The Nixon administration announced in the spring of 1972 that it sought "equality education" and "equal educational opportunity" within the context of a "neighborhood school system."⁵⁸ Should the Supreme Court and other federal courts accept the goals set forth by President Nixon, the movement to achieve fiscal neutrality might serve to end the thrust toward desegregation which marked the era of judicial activism in the past two decades.⁵⁹

Summary

In some ways, the educational politics of Washington, D.C. has seemed to reflect the broad trends in the country as a whole over the past decade. First there was a period marked by a preoccupation with desegregation efforts. Then, as the end of legal segregation failed to achieve integration or quality education for poor black children, the demand grew for wider citizen participation and "control" of local schools. But control over unequal resources seemed a bad bargain, and attention focused on equal opportunity and fiscal neutrality in systems of school finance. As part of the latter thrust there was a shift in emphasis away from attacking the idea of professionalism and toward holding the professionals "accountable," measuring performance, and securing quality education.

The special elements in the District's situation, however, should not be overlooked. The absence of local self-government, the central city's declining and changing population, and the ubiquitous presence of the federal government will continue as distinctive influences in local affairs. Events in the District will continue to mirror high-level shifts in policy of executive officials and be shaped by the suspicions of hostile congressional committees. It would also be misleading to think of desegregation, decentralization, and equal educational opportunity as separate and discontinuous stages. The slate is never wiped clean in history, and in fact there is a considerable overlap in the policy objectives and administrative practices pursued in the three phases. The present agenda of educational politics in the District consists largely of efforts to sort out the conflicts, ambiguities, and linkages among desegregation policies, community involvement, and the objective of fiscal equality. Desegregation, while it is no longer as salient an issue as it once was in view of the overwhelming black school population in the District, has not been abandoned as a policy goal, especially on the part of the highly educated and upper-income blacks who live in Washington's integrated upper-class society and form part of the city's natural aristocracy.

Decentralization, although not in the original community control version such as in the Morgan or Anacostia schools, has retained wide appeal among parents and has been officially endorsed by the school administration. Hugh J. Scott, the new black superintendent of the D.C. school system, announced his opposition to the concept of community control not long after assuming office. In his view community control would be "the worst thing that could happen to the city school system." There should be

more community involvement in the schools, but not control. I don't support having local school boards across the city. I don't want enclaves of weakness and strength where the strong get stronger and the weak weaker. The school system is so disorganized and divided now that we must pull together. (The School System) needs strong leadership from downtown.⁶⁰

In May 1971, Scott elaborated his proposal for administrative decentralization within the framework of an overall reorganization of the D.C. school system.⁶¹ Essentially Scott's strategy was to submerge the decentralization proposal within the broader framework of a reorganization that would strengthen the superintendent's budgetary and managerial powers. Community involvement in the schools in theory would increase, though within the context of citizen access to a strengthened and more efficient school bureaucracy.

The goal of equal educational opportunity has added a new challenge for school officials. Although in some ways the court order might be seen as working against both the goals of desegregation and of decentralization, it is Superintendent Scott's policy that the various objectives are compatible and should each be vigorously pursued. Added to this complex mixture is the concept of "quality education," which has been variously interpreted as either a synonym for equal opportunity or a revival in disguised form of the old system of "ability grouping" ruled unconstitutional in the original Hobson v. Hansen decision. The D.C. school system, like most other big-city school systems, faces a fiscal crisis. The problem is made especially acute by declining school enrollments and Congress' determination to check the rising costs of D.C. public services.

Superintendent Hugh J. Scott, faced with an unenviable task, has brought an energy and leadership to the school system that has not been in evidence since the departure of Carl F. Hansen in 1967. Scott has spoken at hundreds of community meetings, building a constituency and giving a visible presence to the school cause. He has succeeded in breaking down some of the poor blacks' suspicion of the upper-class black establishment and its domination of the District's school system. At the same time he has appeared "safe" to the middle-class, revising the Clark plan for improved reading in District schools, for example, to make it more acceptable to the Washington Teachers Union and parents with above average children. Scott has appeared to be an example of a new breed of big-city superintendent--the educator-politician--who functions something like

a mayor. His critics contend that he is too much the politician, evading issues, postponing hard choices, and blaming others for his own failures. But if reasonable progress is to be made in coping with the massive problems of the Washington school system, the skills of the gifted politician will surely be essential. Scott is perhaps more strategically located to exercise leadership than any of the strong figures who have influenced educational politics in the District in the recent past. Mrs. Anita Allen, Judge J. Skelly Wright, and Julius W. Hobson all exerted their influence indirectly and through parttime involvement with the school system's problems. The problems have continued to grow more serious. The financial crisis has deepened, the middle-class migration to the suburbs has continued, pupil performance has continued to lag while demands on the school system have risen. Whether the D.C. public schools will be a "showcase" for the nation or a source of national embarrassment will depend partly on forces external to the system, but strong leadership within the system is urgently needed and overdue.

Footnotes

- 1.) Except, since 1968, the citizens of Washington, D. C. have voted for the D.C. Board of Public Education, as provided by Public Law 90-292, 90th Cong., H.R. 13042, April 22, 1968.
- 2.) Reorganization Plan No. 3 of 1967, 81 Stat. 948 (1967). President Johnson decided to submit the basic structure of the reform proposed to Congress as a reorganization plan rather than as legislation as a means of by-passing the House District Committee. See Royce Hansen and Bernard H. Ross, Governing the District of Columbia: An Introduction, Washington Center for Metropolitan Studies, Washington, D.C., pp. 16. the major study of the politics of Washington, D.C. is Martha Derthick, City Politics in Washington, D.C., Cambridge, Mass. and Washington, D.C.: Harvard-MIT Joint Center for Urban Studies and the Washington Center for Metropolitan Studies, 1963. The striking characteristics of the local government of Washington, D.C. is its domination by the U.S. Congress. In some ways the authority of Congress over internal administrative affairs of the capital city resembles the power exercised by the central governments of unitary nation-states over their cities. See, for example, Samuel J. Humes and Eileen Martin, the Structure of Local Government Throughout the World, the Hague: Martinus Nijhoff, 1961 pp. 1-2, 31-50; R.M. Jackson, the Machinery of Local Government, London: Macmillan and Co., 1968, pp. 16-16; and further studies cited in Hansen and Bernard Ross, op. cit., p. 2,
- 3.) See James S. Young, The Washington Community, New York: Columbia University Press, 1966, pp. 13-16.
- 4.) See Derthick, City Politics in Washington, D.C., pp. 169-178, for an analysis of the "home rule" controversy and the sources of support for and opposition to the idea.
- 5.) The kinds of intervention are legion, and congressmen may intervene whenever they see political advantage to be gained back home by attacking impropriety, waste, or inefficiency in the administration of D.C. affairs. On a recent trip to Washington, for example, one of the authors observed that Senator Hiram Fong (D, Hawaii) had gained some favorable press attention by attacking the excessive use of limosines by D.C. officials. More to the point for our purposes was the 1970 investigation by the House District Committee into alleged "radicals" in the D.C. educational system. A report was prepared, Investigation and Study of the Public Schools of the District of Columbia, report of the Committee on the District of Columbia, House of Representatives, H.R. 91-1681, 91st Cong., 2nd sess., Dec. 8, 1970., submitted to the Committee of the Whole House and ordered to be printed. A ACLU suit later blocked distribution of the report on the grounds that the publication of ~~the report on the grounds that the publication of the names~~ of individuals labeled as "radicals" was a denial of constitutional rights of due process.

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- 6.) There has been, however, an increase in black migration to the Washington suburbs in recent years. The black percentage of the Washington metropolitan area increased from 6.1 to 7.9 percent in the census period from 1960 to 1970. The great shift of blacks to the Washington central city began in 1920--at which time the District and the suburbs were each approximately one-fourth black.
- 7.) Lawrence Feinberg, "Years Bring Change to Dunbar High School: 'Black Elite' Institution Now Typical Slum Facility," the Washington Post,
- 8.) Lloyd E. Bauch and J. Orin Powers, Public Education in the District of Columbia, Staff Study No. 15. prepared for the President's Advisory Committee on Education, Government Printing Office, 1938, pp. 7-8.
- 9.) See Derthick, City Politics in Washington, D.C., pp. 212 ff.
- 10.) Named for Professor Emeritus George D. Strayer, Columbia Teachers College, who conducted the survey, as summarized in Derthick, op. cit., p. 212.
- 11.) Ibid., p. 214.
- 12.) Hansen and Ross, op. cit., p. 18.
- 13.) Ibid., p. 18
- 14.) See Toward Creating A Model Public School System: A Study of the Washington, D.C. Public Schools (the "Passow Report"), A. Harry Passow, Study Director, Columbia Teachers College, New York, September 1967, p. 51, 71. Derthick, op. cit., p. 222, reports that 14,533 white D.C. children as of October 1959 attended private or parochial schools inside or outside of the District.
- 15.) Hanson and Ross, op. cit., p. 19.
- 16.) Hobson v. Hansen, 269 Fed., Supp. 410 (1967).
- 17.) On the role of law generally in social change, see Frederick M. Wirt, Politics of Southern Equality: Law and Social Change in a Mississippi County, Chicago, Aldine Publishing Co., 1970. Wirt's conclusions regarding the effectiveness of law as an instrument of education change in Panola County have relevance for Washington, D.C. Wirt notes (p. 235): "thus it is that, compared to the vote, educational changes have been few under the force of law. A decade of judicial enforcement after 1954 produced only minute change."
- 18.) Toward Creating A Model School System: A Study of the Washington, D.C. Public Schools, p. 13.
- 19.) Ibid.
- 20.) The court in Hobson v. Hansen noted the possibility of achieving integration through consolidation of the District schools with surrounding suburban school districts.

- 21.) There are some instances of metropolitan cooperation in providing public services, but these are principally in the area of "hardware" rather than "software" government functions. A Metropolitan Washington Council of Government was formed in 1968, but has taken only limited steps to date toward area-wide coordination of government functions. See Hanson and Ross, Governing the District of Columbia, p. 26, and on the earlier efforts in metropolitan cooperation, see Derthick, City Politics in Washington, D.C., pp. 225 ff.
- 22.) Daniel P. Moynihan, Maximum Feasible Misunderstanding, New York, Free Press, 1969.
- 23.) According to one estimate in 1968, 98 percent of the parents whose children attend the Morgan school are black and 80 percent are poor. Morgan Community School: Annual Report to the Community, 1967-68 School Term, mimeo publication of Morgan Community School Board, 1968, p. 2. The main published accounts of the origins of the Morgan experiment include Arthur D. Little, Inc. Urban Education: Eight Experiments in Community Control, Report to the Office of Economic Opportunity, October 31, 1969; Paul Lauter, "the Short Happy Life of the Adams-Morgan Community School Project," Harvard Educational Review, Spring 1968; and Lawrence Feinberg, "Experiment fades: Morgan School Goes Conventional," the Washington Post, July 6, 1971. Our account draws on these sources plus interviews.
- 24.) Arthur D. Little, Inc. Urban Education: Eight Experiments in Community Control, A Report to the Office of Economic Opportunity, October 31, 1969, p. 96.
- 25.) Morgan Community School: Annual Report, 1967-8, p. 5.
- 26.) Ibid. This is the view of events from the perspective of the Morgan Community Board. The Antioch view is rather different. As explained by Paul Lauter in "the Short, Happy Life of the Adams-Morgan Community School Project," cited above, the reason for seeking delay stemmed from the basic unwisdom of launching full-scale into the ambitious effort without adequate preparation. See Lauter, op. cit., pp. 239-247.
- 27.) Quoted in Feinberg, "Experiment Fades," the Washington Post, July 6, 1971.
- 28.) Ibid.
- 29.) "Morgan School Plan Called a Failure," the Washington Post, May 16, 1968, quoted in Eight Experiments, op. cit., p. 100.
- 30.) Ibid.
- 31.) The Corporation Counsel was gotten around by his simply not being asked to rule on the agreements in question. A similar agreement was subsequently approved between the Adams Community Board and the D.C. school system.

32.) In 1971 the Morgan School received more government and private foundation grants than any other school in the city. It also ranked in the top fifth among all city elementary schools in spending from the regular budget. Before the community control experiment, spending per pupil at Morgan from the regular city budget was much below the city-wide average. From 1968 to 1971, the school received \$440,000 from the federal government, mostly in direct payments, bypassing the D.C. school board, for an elaborate Follow-Through Program for kindergarten, first and second graders, with \$231,000 scheduled for 1971-72 under the Follow-Through grant. Morgan has also received about \$100,000 from foundations, the biggest donation being \$60,000 from the Ford Foundation.

33.) Grant McConnell, Private Power and American Democracy, New York, Alfred A. Knopf, 19 , Ch. 4 presents an extended discussion of the politics of small constituencies such as town meetings, school boards, village councils, which typically display oligarchical characteristics, factionalism, and lack of orderly articulation of issues.

34.) Statement of Jeanne Walton, member of the Morgan Community School Board, at a meeting of the Board and staff of the Morgan Community School, Wednesday, March 25, 1970, mimeo.

35.) Confidential interviews.

36.) Quoted in Feinberg, "Experiment Fades," The Washington Post, July 6, 1971.

37.)

38.) Feinberg, "Experiment Fades," the Washington Post, July 6, 1971.

39.) Quoted in Ibid.

40.) Comment at Williamsburg, Va., Conference of the Anglo-American Project on Accountability, sponsored by the Carnegie Corporation of New York, September 2-5, 1971. Staats put the figure at ten states with acceptable audit systems, and indicated that most municipalities in the nation do not have financial management systems that are minimally acceptable.

41.) Based on Feinberg, op. cit., and on confidential interviews with officials in the D. C. school system.

42.) Interview, Washington, D.C., March 1, 1972. Earlier Scott had taken a strong position against new community control experiments in the school system. See below, pp.

43.) Martha Derthick, "Defeat at Fort Lincoln," The Public Interest,

44.) President's Message on the District of Columbia, 4 Presidential Documents 498, 502-03 (1968).

45.) Documents obtained from L.B.J. Library, Austin, Texas, courtesy of Lawrence Feinberg, the Washington Post, who kindly gave us access to his file on Anacostia.

46.) Letter from Harold Howe to Congressman William Natcher, April 1, 1968, reprinted in the documentary file of the Anacostia Community School Project Appeal to U.S. Commissioner of Education Sidney Marland, Jr., copy obtained from Anacostia project offices.

47.) Staff Memorandum on Overall Assessment of Anacostia Project With Recommendations for Action, September 30, 1971, by Robert B. Binswanger, in Anacostia appeal documents.

48.) An elaborate campaign, including the use of "mau mau" tactics against Binswanger at a neighborhood meeting where he served as the federal "flak-catcher", failed to move Commissioner Marland. Confrontation tactics seemed to have little effect at the federal level. Nixon administration officials, despite their embrace of the rhetoric of decentralization, have been much less inclined to accept the legitimacy of neighborhood groups as participants in the educational policy process than their predecessors in the Office of Education. Remarks by Harold Howe, Participation and Partnership, before the annual meeting of the Council of Chief State School Officers, Salt Lake City, Utah, November 18, 1968, reflect the enthusiasm of Great Society policy officials ^{for} with the participation ethic and contrast sharply with the prevailing cautious view of the Nixon administration.

49.) Bart Barnes, "Anacostia to Get New School Plan," the Washington Post, January 2, 1972.

50.) Ibid.

51.) ^{Holston v. Hansen,} Civil Action No. 82-66, U. S. District Court for the District of Columbia. The leading cases include Serrano v. Priest, 5 Cal. 3rd 584; 96 Cal. Rptr. 601; 487 P. 2nd 1241, decided by the Supreme Court of California on August 30, 1971; Van Dusartz v. Hatfield, 334 F. Supp. 870, decided October 15, 1971 by a Federal district judge; Rodriguez v. San Antonio Independent School District, 40 Law Week 2398, decided by a three judge Federal District court on December 23, 1971; Robinson v. Cahill, 287 A. 2nd 187, ^{exists} ~~exists~~ in the ^{Supreme Court} ~~Supreme Court~~ of New Jersey on January 19, 1972; and Spanno v. Board of Education, 40 Law Week 2475, decided by a State judge of the Supreme Court of New York on January 21, 1972. Earlier school finance cases, McInnis v. Wilkerson, 293 F. Supp. 572, ~~and~~ affd. Mem. sub. nom. as McInnis v. Ogilview, 394 U. S. 322, and Burrus v. Wilkerson, 397 U. S. 44, involved arguments made by plaintiffs asking Federal district courts to determine the "educational needs" of students. These cases present a somewhat conflicting precedent in that they upheld state legislation and reflect a policy of judicial non-intervention. For a review of the cases, see Richard Pious, "The Judiciary and Public School Financing," Current History, See also "School Finance Litigation: A Strategy Session" in 2 Yale Review of Law and Social Action (1971).

52.) Hobson v. Hansen, May 25, 1971, at 7. In the area west of the Park the elementary school population was 74 percent while 98 percent black in the area east of the Park.

53.) Ibid., at 30. On the various meanings of "equality," see John Coons, William ~~Clune~~ Clune, and Stephen Sugarman, Private Wealth and Public Education, Cambridge, Harvard University Press, 1971, pp.

54.) Hobson v. Hansen, at 23.

55.) Irna Moore, "Many Schools Violating Order to Equalize Spending on School Faculty," The Washington Post, February 19, 1972. The school system had apparently succeeded, however, in "leveling down" the twelve elementary schools west of Rock Creek Park, for as a group those twelve elementary schools now showed per pupil expenditures one percent lower than the rest of the city as a whole and only three per cent higher than those in Anacostia. The schools out of compliance seemed to show no geographic pattern.

56.) Ibid.

57.) Interview with Julius W. Hobson, Director, Washington Institute for Quality Education, Washington, D. C., February 29, 1972.

58.) President Nixon's message to Congress outlining a legislative proposal for a moratorium on busing is excerpted in The New York Times, March 17, 1972

59.) See Pious, op. cit., pp.

60.) Quoted in The Washington Post, March 2, 1971

61.) Proposed Administrative Reorganization of the D.C. Public School System, A Report by Superintendent Hugh J. Scott, May 5, 1971, mimeo.

62.)

WASHINGTON INSTITUTE FOR QUALITY EDUCATION

THE PROBLEM

". . . The Nation in abolishing Negro slavery merely released the Negro into the bondage of an informal social and economic caste system, cemented together by bias and discrimination. Despite the revolution of the last 13 years, these attitudes remain distressingly pervasive forces in race relations even today. What is meant to be Negro in America thus becomes a psychological fact in the daily lives of Negro children, who are the heirs and victims of these traditions of prejudice, significantly influencing their attitudes toward study and education; understandably, in their view, the predominantly Negro school is part of a history of exile and bondage. And Negroes read in the eyes of the white community the judgment that their schools are inferior and without status, thus confirming and reinforcing their own impressions. Particularly this is true in Washington where the white community has clearly expressed its views on the predominantly Negro schools through the behavior of white parents and teachers who, the court finds, in large numbers have withdrawn or withheld their children from, and refused to teach in, those schools.

In an environment defined by such unhealthy attitudes it should not be surprising that the predominantly Negro schools show a pronounced intrinsic tendency to slide into pathology and hopelessness. This of course affects the schools' teachers of whatever race whose own demoralization and low expectations, communicate back to the children, contribute further to the schools' social disintegration in a vicious though understandable circle."*

DECLARATION FOR POSITIVE ACTION

In order to ensure the right of each and every child in the District of Columbia to a quality education, the I.Q.E. hereby pledges itself to work unceasingly toward these objectives:

BOARD OF EDUCATION

To elect a Board of Education that is fearless in its zeal to improve the District ^{School} System; and that is qualified by evidence of prior commitment to and belief in all of the children in the system with emphasis on poor children and black children, with the

*Source: Judge Skelly Wright's decision of June 19, 1967 in the Hobson vs. Hansen School Case, Civil Action 82-66, pp 24-25.

educational welfare ^{and} development of each child as the prime and central concern.

Recommend _____
Disapprove _____

To support community and Board of Education control of the schools. The basic policy of the Board must be geared to quality education at any cost. This policy may mean a confrontation with the U. S. Congress; however, the policy of the Board must be full speed ahead without equivocation and compromise.

Recommend _____
Disapprove _____

To have the Board employ four full-time staff persons who will directly serve members of the Board of Education as specialized Administrative Assistants. The first person so employed will be assigned to continuously monitor the enforcement of the laws of the District of Columbia as they relate to the public schools and regularly report to the Board on the implementation of the court orders.

Recommend _____
Disapprove _____

SUPERINTENDENT OF SCHOOLS

To work for the appointment of a superintendent of schools who is visionary, creative, aggressive, educationally innovating by prior example and totally committed to the development of a new educational approach for the children of the District of Columbia.

Recommend _____
Disapprove _____

TEACHER TRAINING

To support immediate teacher training reforms in all District of Columbia colleges that have teacher education programs and to

insist that the Board of Education adopt a policy of refusing to hire teachers who are not products of reform-oriented teacher education programs, including the placement of qualified B.A.'s in the school system as regular teachers on the basis of a specialized Board run program.

Recommend _____
Disapprove _____

To expand the utilization of teacher-aides on a District-wide basis to support the existing teaching staff and provide individualized assistance where necessary; and to increase the use of qualified part-time teachers for special instruction.

Recommend _____
Disapprove _____

To concentrate teacher in-service training along lines of raising the expectations of the teacher. Most of the failures of the ghetto teacher to believe in the child. Many educational innovations cost more in both time and money than inducing teachers to expect more of "disadvantaged" children. The value of this approach has been dramatically indicated in a controlled experiment in a San Francisco elementary school* and in the Banneker School in St. Louis.

Recommend _____
Disapprove _____

SCHOOL BUILDINGS

To encourage and support innovative physical plant changes including new architectural designs and programs for new buildings, renovation of existing buildings and utilizations of non-educational

*Scientific American, Vol. 218, April 1968 "Teacher Expectations for the Disadvantaged."

buildings in the community that can be converted to educational centers.

Recommend _____
Disapprove _____

To have the Board utilize the central school as a "resource center" and promote the establishment of a series of educational centers located in store fronts, apartments, and office buildings as long as needed. The need for these smaller units is based on overcrowded schools and the need to attempt to work with children and youth in their own environment utilizing the school plant as a resource center rather than ^{as} the only recognized center of learning.

Recommend _____
Disapprove _____

ADMINISTRATIVE CHANGE

To work for a complete overhaul of the personnel of the D. C. School System. This means the decentralization of the central office and the early retirement, removal and transfer of personnel who are not willing to work wholeheartedly for immediate educational reform including:

1. Complete integration
2. Massive retraining and innovative in-service training through very specific programs outlined by the Superintendent and approved by the Board of Education.
3. Rating by pupils and parents as well as supervisors and community involvement on an active scale in their "school community."

Recommend _____
Disapprove _____

CURRICULUM REFORM

To encourage and support immediate curriculum reform at every level of the school system--using the needs of the children as the basis for selection and utilization of educational materials and

aids.

Recommend _____
Disapprove _____

To support the hiring of a maximum number of new reading specialists--who will receive intensive specialized training geared to specific reading problems of Washington, D. C. with a moratorium on all group or individualized standardized tests for a two year period.

Recommend _____
Disapprove _____

EXPERIMENTAL EDUCATIONAL PROJECTS

To evaluate the increasing number of special experimental projects proposed and presently financed through private and public funds. Projects which do not meet the following criteria will be rejected or discontinued.

1. Will (does) the cost of the experiment foster expenditure inequities within the school system?
2. Can the experiment be expanded to the whole school system within a reasonable time?
3. Has the experiment been tried successfully elsewhere, if so why can it not be adapted to all D. C. public schools?
4. Has there been an examination or study of these existing experiments in other school districts, if so, which ones appear to be adaptable to the entire D. C. public schools without costly models?

Educational experiments have been carried out in center city schools throughout the United States. These experiments have on a whole failed to improve the quality of education for the vast majority of the center city school children. At the same time they have been costly and have contributed to the existing inequity that prevails in average expenditures per pupil within individual center city school systems.

Recommend _____
Disapprove _____

NEW SCHEDULING

To develop a new scheduling system that will keep the schools open on a year-round basis. The new scheduling will actively seek to develop a greater flexibility for specialized experience on college campuses, in youth camps, in special work study programs, foreign countries, and exchange programs in the United States for all children at least every other school year.

Recommend _____
Disapprove _____

The Board of Education should recognize that the educational responsibilities are not limited to the age group of 5 - 18 years, but that it is responsible to the entire community.

Recommend _____
Disapprove _____

STUDIES

To recommend against future studies of the total D. C. school system/ These studies cost up to \$250,000 and have not resulted in any effective or creative program changes.

Recommend _____
Disapprove _____

TWO YEAR GOAL

To work for the implementation of the above changes through official policies of the elected Board of Education and an immediate program of implementation of all policies with a deadline of February 1, 1971.

Recommend _____
Disapprove _____

Tina Lower
Chairman
8/21/68

OTHER PROCEDURES TO RELIEVE OVER-CROWDING OR ACHIEVE INTEGRATION

There are many procedures used in various urban centers to relieve severe overcrowding, and/or to bring some measure of racial or socio-economic integration to public schools. The following descriptions are not an evaluation of any of these programs. They are simply offered for your consideration and discussion today.

1. Voluntary Transfers. Under this plan, pupils from overcrowded schools are transferred by the school system to an under-capacity school in another section of the city. Such transfers are voluntary, with the permission of the parents, and transportation is provided by the city.
2. Free Choice - Open Enrollment. Pupils in a predominantly Negro school are given the opportunity to enroll in predominantly white schools. The percentage of minority group pupils in the receiving school is maintained below 40%. In recent months, this plan, operating in New York City, has been altered slightly to encourage "reverse open enrollment" i.e. pupils from a predominantly white school are encouraged to transfer to a predominantly Negro school. In all cases, the costs of transportation are borne by the city.
3. Suburban-Urban Interchange. This very new idea is being tried on a limited scale in several urban centers: Boston, Rochester and Hartford. Other cities are trying it on a limited one to one basis for a few weeks at a time. Successful implementation requires a high degree of cooperation between separate school systems. At present, no such exchange has crossed state lines (as such a system would do here.)
4. Educational Parks. With one possible exception, in the NE, it would be difficult to establish an educational park in the immediate future in the District. This concept should be thoroughly considered in any future building plans for schools in the District. An educational park brings together a large number of pupils from pre-school through high school on a single campus or site. There are many such plans and proposals available for study and consideration.
5. Education Complexes. An education complex is a group of schools, elementary, and junior high, feeding into a single high school. A complex could easily be established with Western, Francis, Gordon and Jefferson and the feeder elementary schools. Official recognition of such a complex would permit a thorough preparation of younger pupils for eventual enrollment in Western. Some stability would have to be brought to the feeder schools, along with an assurance that attendance in the feeder schools would be followed by enrollment at Western in order to make the plan work.
6. Princeton Plan. There are many variations to this proposal which basically changes the makeup of an existing group of schools. As applied to the Western area, the plan would call first for the designation of Western and its feeder schools as an education complex; second, Gordon would become the 9th grade school because its nearness to Western would permit more articulation between Western and what, after all, is the first year of high school. Francis and Jefferson become combination 7th and 8th grade schools. There are many educational justifications for separating 7th and 8th graders from more mature 9th grade students. There are approximately 2300 students in the three junior high schools at this time. Dividing them in this manner would have to be worked out in keeping with the capacity of the three schools since Jefferson is somewhat smaller than the other two. Transportation offers no serious problems since students SE, SW and lower NW could easily be

enrolled at Jefferson, while students from Cleveland Park, Mount Pleasant and other NW neighborhoods could be enrolled at Francis. ~~Finally, the plan could ease some~~ what over-crowding at Western, since students enrolled at Western who are taking first year courses, could attend those classes at Gordon.

7. Magnet Schools-Consortiums. Schools located relatively near each other could be designated as "magnet" schools, with an assigned specialty for each one. Students enrolled at one school would be encouraged to attend magnet classes at a nearby school for a portion of the day. For this area such a plan could include Coolidge, Roosevelt, Western and Wilson. Each school would be assigned a major interest area, such as foreign languages, social studies, science and math, creative writing, drama and graphic arts. Students who enroll in the program could go directly from home to the magnet school for an extended class period, either daily, three times weekly, or twice weekly. At the end of the designated time, buses provided by the school system, would transport the student back to his home school for afternoon work and extra-curricular activities. In this way, students from these four schools would have an equal opportunity to enroll in classes....the demand for which might not justify establishment at each school. A similar plan could operate as a Central Consortium, with Dunbar, Cardozo and McKinley; and as an Eastern Consortium, with Anacostia, Ballou, Spingarn, Eastern, and the planned school for Northeast.

8. Temporary Measures. Since the completion of a new high school in Northeast, scheduled for 1970, may bring the need for further boundary changes at that time, some thought might be given to methods of easing over-crowding as it now exists, particularly at Western. The establishment of mobile classrooms beside, or on the property, of all District high schools this fall, could bring a great measure of relief to these schools, and would permit students who wish to do so, to remain at their neighborhood high school, assured of a seat, a classroom and a teacher.

WASHINGTON INSTITUTE FOR QUALITY EDUCATION

Proposal

PLANNING FOR EQUITABLE DISTRIBUTION

OF SUPPORT TO PUBLIC EDUCATION

April 19, 1973

PURPOSE

Two most dispiriting influences are now at play on the scene of American public education. The first is Christopher Jencks' enunciation-from-on-high that one's life die is cast in the socio-economic environment of one's birth, that the process of public education can have no significant improving effect on career development thereafter.

The second is the recent Rodriguez decision of the United States Supreme Court, wherein we are informed that equal access to educational opportunity is not necessarily a fundamental right of the American citizen, past decisions of the Warren Court notwithstanding.

Encouraged by Jencks, empowered by a Supreme Court now dominated by a bloc of Justices kindred to its purpose, the Nixon Administration moves ahead to dismantle Federal support programs in the field of education. Local jurisdictions continue with impunity, even an officially clear conscience, inequitable allocation and support practices born in earlier times of sanctioned bias against the disadvantaged. Poor people -- of all races, creeds, colors -- are the inevitable victims of this deterioration in American leadership.

The Washington Institute for Quality Education (WIQE) -- Julius W. Hobson, Director -- therefore submits this request for a planning grant. Our purpose is to set out a research approach that can be expected to develop a body of statistical analysis to counter the negative and discouraged trend of current action on public support for education. With recorded experience since 1966 issuance of the U.S. Office of Education's Coleman Report and demographic and economic analysis derived from the 1970 Census now fully available, it is felt that more realistic evaluation of educational progress and potential can be derived than has heretofore been available. Essentially, the need is to demonstrate that legally and humanly unacceptable inequity exists in the allocation of tax-derived resources to public schooling, and that such inequity contributes to unfair situations conducive to development of the Jencks doctrine.

(Julius -- two paragraphs on why Jencks is attackable)

(Higgs -- two paragraphs on why Rodriguez is attackable)

Further, it can be hoped that a sufficiently strong and persuasive research effort will provide substantial grounds to overturn, or skirt, the Rodriguez decision and allow satisfying reform in allocation of resources as between rich and poor public school jurisdictions.

APPROACH

A planning grant of approximately \$25,000 is suggested as sufficient to:

- (1) Develop a study structure;
- (2) Obtain commitment of unquestionably reputable professional talent and leadership; and
- (3) Prepare documentation necessary to obtain sizeable public and/or private resources to mount the study proper.

The approach of WIQE would be to apply the virtually full-time services of its core associates to set forth a grant proposal structure and meet its schedule of preparation; to rely for knowledgeable guidance upon consultative cooperation from leading, committed figures in statistical analysis, sociology and education.

In all probability, the final package would call for two phases of undertaking. The first would emphasize statistical analysis of the equity of current allocation practices, derivable from the bank of education funding data and information from the U.S. Census Bureau. The second would be the more concerned with allocation practices as they bear on, positively and negatively, the effectiveness and accountability of educational performance in our community.

A time period of six weeks to two months is expected to be necessary to create a creditable research proposal. In addition to professional services, expense allowance will be required for administrative costs, and a minimum of travel away from Washington, DC. (An estimated budget breakdown is attached.)

As perspective on the eventual need, it should be borne in mind that the Coleman Report involved a total cost of upwards of \$2 million, the Jencks study represents some \$700,000 of foundation grants, and the second Hobson v Hansen decision of Judge Skelley Wright (ordering equitable distribution of resources in elementary schools of the District of Columbia) resulted from a research investment of over \$80,000.

BUDGET

May 1, 1973 - July 31, 1973

I. <u>Professional Services</u>			
A. <u>WIQE</u>			14,665
J. W. Hobson	6 wks @ \$150/day	4,500	
W. E. Mylecraine	6 wks @ \$125/day	3,750	
W. Higgs	3 wks @ \$125/day	1,875	
Statistician	3 wks @ \$100/day	1,500	
Educator	3 wks @ \$100/day	1,500	
Clerical (2)	6 wks @ \$25/day	1,500	
B. <u>Consultants</u>			2,100
Statistics	3 days @ \$150	450	
Sociology	3 days @ \$150	450	
Education	3 days @ \$150	450	
Mngmnt Organization	5 days @ \$150	750	
II. <u>Administrative Costs</u>			3,700
A. Office rent	3 mos. @ \$250	750	
B. Equipment rental (2 typewriters, 2 calculators, furniture)		1,000	
C. Office supplies		400	
D. Telephone		750	
E. Postage and Printing		800	
III. <u>Travel</u> (primarily for consultants)			5,000
25 travel days (transportation, per diem)	@ \$200/day	5,000	
TOTAL			<hr/> \$25,665

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT ET AL. v. RODRIGUEZ ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS

No. 71-1332. Argued October 12, 1972—Decided March 21, 1973

The financing of public elementary and secondary schools in Texas is a product of state and local participation. Almost half of the revenues are derived from a largely state-funded program designed to provide a basic minimum educational offering in every school. Each district supplements state aid through an ad valorem tax on property within its jurisdiction. Appellees brought this class action on behalf of school children said to be members of poor families who reside in school districts having a low property tax base, making the claim that the Texas system's reliance on local property taxation favors the more affluent and violates equal protection requirements because of substantial interdistrict disparities in per-pupil expenditures resulting primarily from differences in the value of assessable property among the districts. The District Court, finding that wealth is a "suspect" classification and that education is a "fundamental" right, concluded that the system could be upheld only upon a showing, which appellants failed to make, that there was a compelling state interest for the system. The court also concluded that appellants failed even to demonstrate a reasonable or rational basis for the State's system.

Held:

1. This is not a proper case in which to examine a State's laws under standards of strict judicial scrutiny, since that test is reserved for cases involving laws that operate to the disadvantage of suspect classes or interfere with the exercise of fundamental rights and liberties explicitly or implicitly protected by the Constitution. Pp. 14-40.

(a) The Texas system does not disadvantage any suspect class. It has not been shown to discriminate against any definable class of "poor" people or to occasion discriminations depending on the

II SAN ANTONIO SCHOOL DISTRICT v. RODRIGUEZ

Syllabus

relative wealth of the families in any district. And, insofar as the financing system disadvantages those who, disregarding their individual income characteristics, reside in comparatively poor school districts, the resulting class cannot be said to be suspect. Pp. 14-24.

(b) Nor does the Texas school-financing system impermissibly interfere with the exercise of a "fundamental" right or liberty. Though education is one of the most important services performed by the State, it is not within the limited category of rights recognized by this Court as guaranteed by the Constitution. Even if some identifiable quantum of education is arguably entitled to constitutional protection to make meaningful the exercise of other constitutional rights, here there is no showing that the Texas system fails to provide the basic minimal skills necessary for that purpose. Pp. 25-35.

(c) Moreover, this is an inappropriate case in which to invoke strict scrutiny since it involves the most delicate and difficult questions of local taxation, fiscal planning, educational policy, and federalism, considerations counseling a more restrained form of review. Pp. 35-40.

2. The Texas system does not violate the Equal Protection Clause of the Fourteenth Amendment. Though concededly imperfect, the system bears a rational relationship to a legitimate state purpose. While assuring basic education for every child in the State, it permits and encourages participation in and significant control of each district's schools at the local level. Pp. 40-49.

337 F. Supp. 280, reversed.

POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, BLACKMUN, and REHNQUIST, JJ., joined. STEWART, J., filed a concurring opinion. BRENNAN, J., filed a dissenting opinion. WHITE, J., filed a dissenting opinion, in which DOUGLAS and BRENNAN, JJ., joined. MARSHALL, J., filed a dissenting opinion, in which DOUGLAS, J., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 71-1332

San Antonio Independent School District et al., Appellants, <i>v.</i> Demetrio P. Rodriguez et al.	}	On Appeal from the • United States Dis- trict Court for the Western District of Texas.
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[March 21, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

This suit attacking the Texas system of financing public education was initiated by Mexican-American parents whose children attend the elementary and secondary schools in the Edgewood Independent School District, an urban school district in San Antonio, Texas.¹ They brought a class action on behalf of school children throughout the State who are members of minority groups or who are poor and reside in school districts having a low property tax base. Named as defendants² were the State Board of Education, the Commissioner

¹ Not all of the children of these complainants attend public school. One family's children are enrolled in private school "because of the condition of the schools in the Edgewood Independent School District." Third Amended Complaint, App., at 14.

² The San Antonio Independent School District, whose name this case still bears, was one of seven school districts in the San Antonio metropolitan area that were originally named as party defendants. After a pretrial conference, the District Court issued an order dismissing the school districts from the case. Subsequently, the San Antonio Independent School District has joined in the plaintiffs' challenge to the State's school finance system and has filed an *amicus curiae* brief in support of that position in this Court.

2 SAN ANTONIO SCHOOL DISTRICT *v.* RODRIGUEZ

of Education, the State Attorney General, and the Bexar County (San Antonio) Board of Trustees. The complaint was filed in the summer of 1968 and a three-judge court was impaneled in January 1969.³ In December 1971⁴ the panel rendered its judgment in a *per curiam* opinion holding the Texas school finance system unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.⁵ The State appealed, and we noted probable jurisdiction to consider the far-reaching constitutional questions presented. 406 U. S. 966 (1972). For the reasons stated in this opinion we reverse the decision of the District Court.

I

The first Texas Constitution, promulgated upon Texas' entry into the Union in 1845, provided for the establishment of a system of free schools.⁶ Early in its history, Texas adopted a dual approach to the financing of its

³ A three-judge court was properly convened and there are no questions as to the District Court's jurisdiction or the direct appealability of its judgment. 28 U. S. C. §§ 2281, 1253.

⁴ The trial was delayed for two years to permit extensive pretrial discovery and to allow completion of a pending Texas legislative investigation concerning the need for reform of its public school finance system. 337 F. Supp. 280, 285 n. 11 (WD Tex. 1971).

⁵ 337 F. Supp. 280. The District Court stayed its mandate for two years to provide Texas an opportunity to remedy the inequities found in its financing program. The court, however, retained jurisdiction to fashion its own remedial order if the State failed to offer an acceptable plan. *Id.*, at 286.

⁶ Tex. Const., Art. X, § 1 (1845):

"A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, it shall be the duty of the Legislature of this State to make suitable provision for the support and maintenance of public schools."

Id., § 2:

"The Legislature shall as early as practicable establish free schools throughout the State, and shall furnish means for their support, by taxation on property"

SAN ANTONIO SCHOOL DISTRICT *v.* RODRIGUEZ 3

schools, relying on mutual participation by the local school districts and the State. As early as 1883 the state constitution was amended to provide for the creation of local school districts empowered to levy *ad valorem* taxes with the consent of local taxpayers for the "erection of school buildings" and for the "further maintenance of public free schools."⁷ Such local funds as were raised were supplemented by funds distributed to each district from the State's Permanent and Available School Funds.⁸ The Permanent School Fund, established in 1854,⁹ was endowed with millions of acres of public land set aside to assure a continued source of income for school support.¹⁰ The Available School Fund, which received income from the Permanent School Fund as well as from a state *ad valorem* property tax and other designated taxes,¹¹ served as the disbursing arm for most state educational funds throughout the late 1800's and first half of this century. Additionally, in 1918 an increase in state property taxes was used to finance a program providing free textbooks throughout the State.¹²

Until recent times Texas was a predominantly rural State and its population and property wealth were spread relatively evenly across the State.¹³ Sizable differences

⁷ Tex. Const. 1876, Art. 7, § 3, as amended, Aug. 14, 1883.

⁸ Tex. Const., Art. 7, §§ 3, 4, 5.

⁹ Gammel's Laws of Texas, p. 1178. See Tex. Const., Art. 7, §§ 1, 2 (interpretive commentaries); I Report of Governor's Committee on Public School Education, The Challenge and the Chance 27 (1969) (hereinafter Governor's Committee Report).

¹⁰ Tex. Const., Art. 7, § 5 (see also the interpretive commentary); V Governor's Committee Report, at 11-12.

¹¹ The various sources of revenue for the Available School Fund are cataloged in Texas State Bd. of Educ., Texas Statewide School Adequacy Survey 7-15 (1938).

¹² Tex. Const., Art. 7, § 3, as amended, Nov. 5, 1918 (see interpretive commentary).

¹³ I Governor's Committee Report, at 35; Texas State Bd. of Educ., *supra*, n. 11, at 5-7; J. Coons, W. Clune, S. Sugarman,

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in the value of assessable property between local school districts became increasingly evident as the State became more industrialized and as rural-to-urban population shifts became more pronounced.¹⁴ The location of commercial and industrial property began to play a significant role in determining the amount of tax resources available to each school district. These growing disparities in population and taxable property between districts were responsible in part for increasingly notable differences in levels of local expenditure for education.¹⁵

In due time it became apparent to those concerned with financing public education that contributions from the Available School Fund were not sufficient to ameliorate these disparities.¹⁶ Prior to 1939 the Available School Fund contributed money to every school district at a rate of \$17.50 per school-age child.¹⁷ Although the amount was increased several times in the early 1940's,¹⁸ the Fund was providing only \$46 per student by 1945.¹⁹

Private Wealth and Public Education 48-49 (1970); E. Cubberley, School Funds and Their Apportionment 21-27 (1905).

¹⁴ By 1940 one-half of the State's population was clustered in its metropolitan centers. I Governor's Committee Report, at 35.

¹⁵ Gilmer-Aiken Committee, To Have What We Must 13 (1948).

¹⁶ R. Still, The Gilmer-Aiken Bills 11-12 (1950); Texas State Bd. of Educ., *supra*, n. 11.

¹⁷ R. Still, *supra*, n. 16, at 12. It should be noted that during this period the median per pupil expenditure for all schools with an enrollment of more than 200 was approximately \$50 per year. During this same period a survey conducted by the State Board of Education concluded that "in Texas the best educational advantages offered by the State at present may be had for the median cost of \$52.67 per year per pupil in average daily attendance."

Texas State Bd. of Educ., *supra*, n. 11, at 56.

¹⁸ 1 General Laws of Texas, 46th Legis., Reg. Sess. 1939, at 274 (\$22.50 per student); General & Spec. Laws of Texas, 48th Legis., Reg. Sess. 1943, c. 161, at 262 (\$25.00 per student).

¹⁹ General & Spec. Laws of Texas, 49th Legis., Reg. Sess. 1945, c. 53, at 75.

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Recognizing the need for increased state funding to help offset disparities in local spending and to meet Texas' changing educational requirements, the state legislature in the late 1940's undertook a thorough evaluation of public education with an eye toward major reform. In 1947 an 18-member committee, composed of educators and legislators, was appointed to explore alternative systems in other States and to propose a funding scheme that would guarantee a minimum or basic educational offering to each child and that would help overcome interdistrict disparities in taxable resources. The Committee's efforts led to the passage of the Gilmer-Aiken bills, named for the Committee's co-chairmen, establishing the Texas Minimum Foundation School Program.²⁰ Today this Program accounts for approximately half of the total educational expenditures in Texas.²¹

The Program calls for state and local contributions to a fund earmarked specifically for teacher salaries, operating expenses, and transportation costs. The State, supplying funds from its general revenues, finances approximately 80% of the Program, and the school districts are responsible—as a unit—for providing the remaining 20%. The districts' share, known as the Local Fund Assignment, is apportioned among the school districts under a formula designed to reflect each district's relative taxpaying ability. The Assignment is first divided among Texas' 254 counties pursuant to a com-

²⁰ For a complete history of the adoption in Texas of a foundation program, see R. Stills, *supra*, n. 16. See also V Governor's Committee Report, at 14; Texas Research League, Public School Finance Problems in Texas 9 (Interim Report 1972).

²¹ For the 1970-1971 school year this state aid program accounted for 48.0% of all public school funds. Local taxation contributed 41.1% and 10.9% was provided in federal funds. Texas Research League, *supra*, n. 20, at 9.

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plicated economic index that takes into account the relative value of each county's contribution to the State's total income from manufacturing, mining, and agricultural activities. It also considers each county's relative share of all payrolls paid within the State and, to a lesser extent, considers each county's share of all property in the State.²² Each county's assignment is then divided among its school districts on the basis of each district's share of assessable property within the county.²³ The district, in turn, finances its share of the Assignment out of revenues from local property taxation.

The design of this complex system was two-fold. First, it was an attempt to assure that the Foundation Program would have an equalizing influence on expenditure levels between school districts by placing the heaviest burden on the school districts most capable of paying. Second, the Program's architects sought to establish a Local Fund Assignment that would force every school district to contribute to the education of its children²⁴ but that would not by itself exhaust any district's resources.²⁵ Today every school district does impose a property tax from which it derives locally expendable funds in excess of the amount necessary to satisfy its Local Fund Assignment under the Foundation Program.

In the years since this program went into operation in 1949, expenditures for education—from State as well as local sources—have increased steadily. Between 1949

²² V Governor's Committee Report, at 44-48.

²³ At present there are 1,161 school districts in Texas. Texas Research League, *supra*, n. 20, at 12.

²⁴ In 1948 the Gilmer-Aiken Committee found that some school districts were not levying any local tax to support education. Gilmer-Aiken Committee, *supra*, n. 15, at 16. The Texas State Board of Education Survey found that over 400 common and independent school districts were levying no local property tax in 1935-1936. Texas State Bd. of Educ., *supra* n. 11, at 39-42.

²⁵ Gilmer-Aiken Committee, *supra*, n. 15, at 15.

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and 1967 expenditures²⁶ increased by approximately 500%.²⁶ In the last decade alone the total public school budget rose from \$750 million to \$2.1 billion²⁷ and these increases have been reflected in consistently rising per pupil expenditures throughout the State.²⁸ Teacher salaries, by far the largest item in any school's budget, have increased dramatically—the state-supported minimum teacher salary has risen from \$2,400 to \$6,000 over the last 20 years.²⁹

The school district in which appellees reside, the Edgewood Independent School District, has been compared throughout this litigation with the Alamo Heights Independent School District. This comparison between the least and most affluent districts in the San Antonio area serves to illustrate the manner in which the dual system of finance operates and to indicate the extent to which substantial disparities exist despite the State's impressive progress in recent years. Edgewood is one of seven public school districts in the metropolitan area. Approximately 22,000 students are enrolled in its 25 elementary and secondary schools. The district is situated in the core-city sector of San Antonio in a residential neighborhood that has little commercial or industrial property. The residents are predominantly of Mexican-American descent: approximately 90% of the student population is Mexican-American and over 6% is Negro. The average assessed property value per pupil is \$5,960—the lowest in the metropolitan area—and the median family

²⁶ I Governor's Committee Report, at 51-53.

²⁷ Texas Research League, *supra*, n. 20, at 2.

²⁸ In the years between 1949 and 1967 the average per pupil expenditure for all current operating expenses increased from \$206 to \$493. In that same period capital expenditures increased from \$44 to \$102 per pupil. I Governor's Committee Report, at 53-54.

²⁹ III Governor's Committee Report, at 113-146; Berke, Carnevale, Morgan & White, *The Texas School Finance Case: A Wrong in Search of a Remedy*, 1 J. of L. & Educ. 659, 681-682 (1972).

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income (\$4,686) is also the lowest.³⁰ At an equalized tax rate of \$1.05 per \$100 of assessed property—the highest in the metropolitan area—the district contributed \$26 to the education of each child for the 1967–1968 school year above its Local Fund Assignment for the Minimum Foundation Program. The Foundation Program contributed \$222 per pupil for a state-local total of \$248.³¹ Federal funds added another \$108 for a total of \$356 per pupil.³²

Alamo Heights is the most affluent school district in San Antonio. Its six schools, housing approximately 5,000 students, are situated in a residential community quite unlike the Edgewood District. The school population is predominantly Anglo, having only 18% Mexican-Americans and less than 1% Negroes. The assessed property value per pupil exceeds \$49,000³³ and the median family

³⁰ The family income figures are based on 1960 census statistics.

³¹ The Available School Fund, technically, provides a second source of state money. That Fund has continued as in years past (see text accompanying nn. 16–19, *supra*) to distribute uniform per pupil grants to every district in the State. In 1968 this Fund allotted \$98 per pupil. However, because the Available School Fund contribution is always subtracted from a district's entitlement under the Foundation Program, it plays no significant role in educational finance today.

³² While federal assistance has an ameliorating effect on the difference in school budgets between wealthy and poor districts, the District Court rejected an argument made by the State in that court that it should consider the effect of the federal grant in assessing the discrimination claim. 337 F. Supp., at 284. The State has not renewed that contention here.

³³ A map of Bexar County included in the record shows that Edgewood and Alamo Heights are among the smallest districts in the county and are of approximately equal size. Yet, as the figures above indicate, Edgewood's student population is more than four times that of Alamo Heights. This factor obviously accounts for a significant percentage of the differences between the two districts in per pupil property values and expenditures. If Alamo Heights had as many students to educate as Edgewood does (22,000) its per

income is \$8,001. In 1967-1968 the local tax rate of \$.85 per \$100 of valuation yielded \$333 per pupil over and above its contribution to the Foundation Program. Coupled with the \$225 provided from that Program, the district was able to supply \$558 per student. Supplemented by a \$36 per pupil grant from federal sources, Alamo Heights spent \$594 per pupil.

Although the 1967-1968 school year figures provide the only complete statistical breakdown for each category of aid,³⁴ more recent partial statistics indicate that the previously noted trend of increasing state aid has been significant. For the 1970-1971 school year, the Foundation School Program allotment for Edgewood was \$356 per pupil, a 62% increase over the 1967-1968 school year. Indeed, state aid alone in 1970-1971 equaled Edgewood's entire 1967-1968 school budget from local, state, and federal sources. Alamo Heights enjoyed a similar increase under the Foundation Program, netting \$491 per pupil in 1970-1971.³⁵ These recent figures

pupil assessed property value would be approximately \$11,100 rather than \$49,000, and its per pupil expenditures would therefore have been considerably lower.

³⁴ The figures quoted above vary slightly from those utilized in the District Court opinion. 337 F. Supp., at 282. These trivial differences are apparently a product of that court's reliance on slightly different statistical data than we have relied upon.

³⁵ Although the Foundation Program has made significantly greater contributions to both school districts over the last several years, it is apparent that Alamo Heights has enjoyed a larger gain. The sizable difference between the Alamo Heights and Edgewood grants is due to the emphasis in the State's allocation formula on the guaranteed minimum salaries for teachers. Higher salaries are guaranteed to teachers having more years of experience and possessing more advanced degrees. Therefore, Alamo Heights, which has a greater percentage of experienced personnel with advanced degrees, receives more State support. In this regard the Texas Program is not unlike that presently in existence in a number of other States. C. Coons, W. Clune, S. Sugarman, *supra*, n. 13, at

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also reveal the extent to which these two districts' allotments were funded from their own required contributions to the Local Fund Assignment. Alamo Heights, because of its relative wealth, was required to contribute out of its local property tax collections approximately \$100 per pupil, or about 20% of its Foundation grant. Edgewood, on the other hand, paid only \$8.46 per pupil, which is about 2.4% of its grant.³⁶ It does appear then that, at least as to these two districts, the Local Fund Assignment does reflect a rough approximation of the relative taxpaying potential of each.³⁷

Despite these recent increases, substantial interdistrict disparities in school expenditures found by the District Court to prevail in San Antonio and in varying degrees throughout the State³⁸ still exist. And it was

63-125. Because more dollars have been given to districts that already spend more per pupil, such Foundation formulas have been described as "anti-equalizing." *Ibid.* The formula, however, is anti-equalizing only if viewed in absolute terms. The percentage disparity between the two Texas districts is diminished substantially by State aid. Alamo Heights derived in 1967-1968 almost 13 times as much money from local taxes as Edgewood did. The State aid grants to each district in 1970-1971 lowered the ratio to approximately two to one, i. e., Alamo Heights had a little more than twice as much money to spend per pupil from its combined State and local resources.

³⁶ Texas Research League, *supra*, n. 20, at 13.

³⁷ The Economic Index, which determines each county's share of the total Local Fund Assignment, is based on a complex formula conceived in 1949 when the Foundation Program was instituted. See text, at pp. 5-6 *supra*. It has frequently been suggested by Texas researchers that the formula be altered in several respects to provide a more accurate reflection of local taxpaying ability, especially of urban school districts. V Governor's Committee Report, at 48; Texas Research League, Texas Public School Finance: A Majority of Exceptions 31-32 (2d Interim Report 1972); Berke, Carnevale, Morgan & White, *supra*, n. 29, at 680-681.

³⁸ The District Court relied on the findings presented in an affidavit submitted by Professor Berke of Syracuse. His sampling of 110 Texas school districts demonstrated a direct correlation

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these disparities, largely attributable to differences in the amounts of money collected through local property taxation, that led the District Court to conclude that Texas' dual system of public school finance violated the Equal Protection Clause. The District Court held that the Texas system discriminates on the basis of wealth in the manner in which education is provided for its people. 337 F. Supp., at 282. Finding that wealth is a "suspect" classification and that education is a "fundamental" interest, the District Court held that the Texas system could be sustained only if the State could show that it was premised upon some compelling

between the amount of a district's taxable property and its level of per pupil expenditure. But his study found only a partial correlation between a district's median family income and per pupil expenditures. The study also shows, in the relatively few districts at the extremes, an inverse correlation between percentage of minorities and expenditures.

Categorized by Equalized Property Values,
Median Family Income, and State-Local Revenue

<i>Market Value of Taxable Property Per Pupil</i>	<i>Median Family Income From 1960</i>	<i>Per Cent Minority Pupils</i>	<i>State & Local Revenues Per Pupil</i>
Above \$100,000 (10 Districts)	\$5,900	8%	\$815
\$100,000-\$50,000 (26 Districts)	\$4,425	32%	\$544
\$50,000-\$30,000 (30 Districts)	\$4,900	23%	\$483
\$30,000-\$10,000 (40 Districts)	\$5,050	31%	\$462
Below \$10,000 (4 Districts)	\$3,325	79%	\$305

Although the correlations with respect to family income and race appear only to exist at the extremes, and although the affiant's methodology has been questioned (see Goldstein, *Interdistrict Inequalities in School Financing: A Critical Analysis of Serrano v. Priest* and its Progeny, 120 U. Pa. L. Rev. 504, 523-525 nn. 67

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state interest. *Id.*, at 282-284. On this issue the court concluded that "[n]ot only are defendants unable to demonstrate compelling state interests . . . they fail even to establish a reasonable basis for these classifications." *Id.*, at 284.

Texas virtually concedes that its historically rooted dual system of financing education could not withstand the strict judicial scrutiny that this Court has found appropriate in reviewing legislative judgments that interfere with fundamental constitutional rights³⁹ or that involve suspect classifications.⁴⁰ If, as previous decisions have indicated, strict scrutiny means that the State's system is not entitled to the usual presumption of validity, that the State rather than the complainants must carry a "heavy burden of justification," that the State must demonstrate that its educational system has been structured with "precision" and is "tailored" narrowly to serve legitimate objectives and that it has selected the "least drastic means" for effectuating its objectives,⁴¹ the Texas financing system and its counterpart in virtually every other State will not pass muster. The State candidly admits that "[n]o one familiar with the Texas system would contend that it has yet achieved perfection."⁴² Apart from its concession that educational finance in

& 71 (1972)), insofar as any of these correlations is relevant to the constitutional thesis presented in this case we may accept its basic thrust. But see pp. 21-23 *infra*. For a defense of the reliability of the affidavit, see Berke, Carnevale, Morgan & White, *supra*, n. 29.

³⁹ *E. g.*, *Police Dept. of the City of Chicago v. Mosley*, 408 U. S. 92 (1972); *Dunn v. Blumstein*, 405 U. S. 330 (1972); *Shapiro v. Thompson*, 394 U. S. 618 (1969).

⁴⁰ *E. g.*, *Graham v. Richardson*, 403 U. S. 365 (1971); *Loving v. Virginia*, 388 U. S. 1 (1967); *McLaughlin v. Florida*, 379 U. S. 184 (1964).

⁴¹ See *Dunn v. Blumstein*, 405 U. S. 330, 343 (1972), and the cases collected therein.

⁴² Appellants' Brief, at 11.

Texas has "defects"⁴³ and "imperfections,"⁴⁴ the State defends the system's rationality with vigor and disputes the District Court's finding that it lacks a "reasonable basis."

This, then, establishes the framework for our analysis. We must decide, first, whether the Texas system of financing public education operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. If so, the judgment of the District Court should be affirmed. If not, the Texas scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment.

II

The District Court's opinion does not reflect the novelty and complexity of the constitutional questions posed by appellees' challenge to Texas' system of school finance. In concluding that strict judicial scrutiny was required, that court relied on decisions dealing with the rights of indigents to equal treatment in the criminal trial and appellate processes,⁴⁵ and on cases disapproving wealth restrictions on the right to vote.⁴⁶ Those cases, the District Court concluded, established wealth as a suspect classification. Finding that the local property tax system discriminated on the basis of wealth, it regarded those precedents as controlling. It then rea-

⁴³ *Ibid.*

⁴⁴ Tr. of Oral Arg., at 3; Appellants' Reply Brief, at 2.

⁴⁵ *E. g.*, *Griffin v. Illinois*, 351 U. S. 12 (1956); *Douglas v. California*, 372 U. S. 353 (1963).

⁴⁶ *Harper v. Bd. of Elections*, 383 U. S. 663 (1966); *McDonald v. Bd. of Election Comm'rs*, 394 U. S. 802 (1969); *Bullock v. Carter*, 405 U. S. 134 (1972); *Goosby v. Osser*, — U. S. — (1973).

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soned, based on decisions of this Court affirming the undeniable importance of education,⁴⁷ that there is a fundamental right to education and that, absent some compelling state justification, the Texas system could not stand.

We are unable to agree that this case, which in significant aspects is *sui generis*, may be so neatly fitted into the conventional mosaic of constitutional analysis under the Equal Protection Clause. Indeed, for the several reasons that follow, we find neither the suspect classification nor the fundamental interest analysis persuasive.

A

The wealth discrimination discovered by the District Court in this case, and by several other courts that have recently struck down school financing laws in other States,⁴⁸ is quite unlike any of the forms of wealth discrimination heretofore reviewed by this Court. Rather than focusing on the unique features of the alleged discrimination, the courts in these cases have virtually assumed their findings of a suspect classification through a simplistic process of analysis: since, under the traditional systems of financing public schools, some poorer people receive less expensive educations than other more affluent people, these systems discriminate on the basis of wealth. This approach largely ignores the hard threshold questions, including whether it makes a difference, for purposes of consideration under the Constitution that the class of disadvantaged "poor" cannot be identified or defined in customary equal protection terms.

⁴⁷ See cases cited in text, at 25-26, *infra*.

⁴⁸ *Serrano v. Priest*, 96 Cal. Rptr. 601, 487 P. 2d 1241, 5 Cal. 3d 584 (1971); *Van Duzart v. Hatfield*, 334 F. Supp. 870 (Minn. 1971); *Robinson v. Cahill*, 118 N. J. Super. 223, 287 A. 2d 187 (1972); *Milliken v. Green*, No. 54,809 (Mich. S. C., Jan. —, 1973).

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and whether the relative—rather than absolute—nature of the asserted deprivation is of significant consequence. Before a State's laws and the justifications for the classifications they create are subjected to strict judicial scrutiny, we think these threshold considerations must be analyzed more closely than they were in the court below.

The case comes to us with no definitive description of the classifying facts or delineation of the disfavored class. Examination of the District Court's opinion and of appellees' complaint, briefs, and contentions at oral argument suggests, however, at least three ways in which the discrimination claimed here might be described. The Texas system of school finance might be regarded as discriminating (1) against "poor" persons whose incomes fall below some identifiable level of poverty or who might be characterized as functionally "indigent,"⁴⁹ or (2) against those who are relatively poorer than others,⁵⁰ or (3) against all those who, irrespective of their personal incomes, happen to reside in relatively poorer

⁴⁹ In their complaint, appellees purported to represent a class composed of persons who are "poor" and who reside in school districts having a "low value of . . . property." Third Amended Complaint, App., at 15. Yet appellees have not defined the term "poor" with reference to any absolute or functional level of impecuniosity. See text, at 18-19, *infra*. See also Appellees' Brief, at 1, 3; Tr. of Oral Arg., at 20-21.

⁵⁰ Appellees' proof at trial focused on comparative differences in family incomes between residents of wealthy and poor districts. They endeavored, apparently, to show that there exists a direct correlation between personal family income and educational expenditures. See text, at 20-23, *infra*. The District Court may have been relying on this notion of relative discrimination based on family wealth. Citing appellees' statistical proof, the court emphasized that "those districts most rich in property also have the highest median family income . . . while the poor property districts are poor in income . . ." 337 F. Supp., at 282.

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school districts.⁵¹ Our task must be to ascertain whether, in fact, the Texas system has been shown to discriminate on any of these possible bases and, if so, whether the resulting classification may be regarded as suspect.

The precedents of this Court provide the proper starting point. The individuals or groups of individuals who constituted the class discriminated against in our prior cases shared two distinguishing characteristics: because of their impecuniness they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit. In *Griffin v. Illinois*, 351 U. S. 12 (1956), and its progeny,⁵² the Court invalidated state laws that prevented an indigent criminal defendant from acquiring a transcript, or an adequate substitute for a transcript, for use at several stages of the trial and appeal process. The payment requirements in each case were found to occasion *de facto* discrimination against those who, because of their indigency, were totally unable to pay for transcripts. And, the Court in each case emphasized that no constitutional violation would have been shown if the State had provided some

⁵¹ At oral argument and in their brief, appellees suggest that description of the personal status of the residents in districts that spend less on education is not critical to their case. In their view, the Texas system is impermissibly discriminatory even if relatively poor districts do not contain poor people. Appellees' Brief, at 43-44; Tr. of Oral Arg., at 20-21. There are indications in the District Court opinion that it adopted this theory of district discrimination. The opinion repeatedly emphasizes the comparative financial status of districts and early in the opinion it describes appellees' class as being composed of "all . . . children throughout Texas who live in school districts with low property valuations." 337 F. Supp., at 281.

⁵² *Mayer v. City of Chicago*, 404 U. S. 189 (1971); *Williams v. Oklahoma City*, 395 U. S. 458 (1969); *Gardner v. California*, 393 U. S. 367 (1969); *Roberts v. LaVallee*, 389 U. S. 40 (1967); *Long v. District Court of Iowa*, 385 U. S. 192 (1966); *Draper v. Washington*, 372 U. S. 487 (1963); *Erskine v. Washington Prison Board*, 357 U. S. 214 (1958).

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"adequate substitute" for a full stenographic transcript. *Britt v. North Carolina*, 404 U. S. 226, 228 (1971); *Gardner v. California*, 393 U. S. 367 (1969); *Draper v. Washington*, 372 U. S. 487 (1963); *Erskine v. Washington Prison Board*, 357 U. S. 214 (1958).

Likewise, in *Douglas v. California*, 372 U. S. 353 (1963), a decision establishing an indigent defendant's right to court-appointed counsel on direct appeal, the Court dealt only with defendants who could not pay for counsel from their own resources and who had no other way of gaining representation. *Douglas* provides no relief for those on whom the burdens of paying for a criminal defense are, relatively speaking, great but not insurmountable. Nor does it deal with relative differences in the quality of counsel acquired by the less wealthy.

Williams v. Illinois, 399 U. S. 235 (1970), and *Tate v. Short*, 401 U. S. 395 (1971), struck down criminal penalties that subjected indigents to incarceration simply because of their inability to pay a fine. Again, the disadvantaged class was composed only of persons who were totally unable to pay the demanded sum. Those cases do not touch on the question whether equal protection is denied to persons with relatively less money on whom designated fines impose heavier burdens. The Court has not held that fines must be structured to reflect each person's ability to pay in order to avoid disproportionate burdens. Sentencing judges may, and often do, consider the defendant's ability to pay, but in such circumstances they are guided by sound judicial discretion rather than by constitutional mandate.

Finally, in *Bullock v. Carter*, 405 U. S. 134 (1972), the Court invalidated the Texas filing fee requirement for primary elections. Both of the relevant classifying facts found in the previous cases were present there. The size of the fee, often running into the thousands of dollars

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and, in at least one case, as high as \$8,900, effectively barred all potential candidates who were unable to pay the required fee. As the system provided "no reasonable alternative means of access to the ballot" (*Id.*, at 149), inability to pay occasioned an absolute denial of a position on the primary ballot.

Only appellees' first possible basis for describing the class disadvantaged by the Texas school finance system—discrimination against a class of definably "poor" persons—might arguably meet the criteria established in these prior cases. Even a cursory examination, however, demonstrates that neither of the two distinguishing characteristics of wealth classifications can be found here. First, in support of their charge that the system discriminates against the "poor," appellees have made no effort to demonstrate that it operates to the peculiar disadvantage of any class fairly definable as indigent, or as composed of persons whose incomes are beneath any designated poverty level. Indeed, there is reason to believe that the poorest families are not necessarily clustered in the poorest property districts. A recent and exhaustive study of school districts in Connecticut concluded that "[i]t is clearly incorrect . . . to contend that the 'poor' live in 'poor' districts Thus, the major factual assumption of *Serrano*—that the educational finance system discriminates against the 'poor'—is simply false in Connecticut."⁵³ Defining "poor" families as those below the Bureau of the Census "poverty level,"⁵⁴ the Connecticut study found, not surprisingly, that the poor were clustered around commercial and industrial areas—those same areas that provide the most attractive sources of property tax income for school districts.⁵⁵

⁵³ Note, A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars, 81 Yale L. J. 1303, 1328-1329 (1972).

⁵⁴ *Id.*, at 1324 and n. 102.

⁵⁵ *Id.*, at 1328.

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Whether a similar pattern would be discovered in Texas is not known, but there is no basis on the record in this case for assuming that the poorest people—defined by reference to any level of absolute impecunity—are concentrated in the poorest districts.

Second, neither appellees nor the District Court addressed the fact that, unlike each of the foregoing cases, lack of personal resources has not occasioned an absolute deprivation of the desired benefit. The argument here is not that the children in districts having relatively low assessable property values are receiving no public education; rather, it is that they are receiving a poorer quality education than that available to children in districts having more assessable wealth. Apart from the unsettled and disputed question whether the quality of education may be determined by the amount of money expended for it,⁵⁶ a sufficient answer to appellees' argument is that at least where wealth is involved the Equal Protection Clause does not require absolute equality or precisely equal advantages.⁵⁷ Nor, indeed, in view of the infinite variables affecting the educational process, can any system assure equal quality of education except in the most relative sense. Texas asserts that the Minimum Foundation Program provides an "adequate" education for all children in the State. By providing 12 years of free public school education, and by assuring teachers, books, transportation and operating funds,

⁵⁶ Each of appellees' possible theories of wealth discrimination is founded on the assumption that the quality of education varies directly with the amount of funds expended on it and that, therefore, the difference in quality between two schools can be determined simplistically by looking at the difference in per pupil expenditures. This is a matter of considerable dispute among educators and commentators. See nn. 86 and 101, *infra*.

⁵⁷ *E. g.*, *Bullock v. Carter*, 405 U. S. 134, 137, 149 (1972); *Mayer v. City of Chicago*, 404 U. S. 189, 194 (1971); *Draper v. Washington*, 372 U. S. 487, 495-496 (1963); *Douglas v. California*, 372 U. S. 353, 357 (1963).

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the Texas Legislature has endeavored to "guarantee, for the welfare of the state as a whole, that all people shall have at least an adequate program of education. This is what is meant by 'A Minimum Foundation Program of Education.'"⁵⁸ The State repeatedly asserted in its briefs in this Court that it has fulfilled this desire and that it now assures "every child in every school district an adequate education."⁵⁹ No proof was offered at trial persuasively discrediting or refuting the State's assertion.

For these two reasons—the absence of any evidence that the financing system discriminates against any definable category of "poor" people or that it results in the absolute deprivation of education—the disadvantaged class is not susceptible to identification in traditional terms.⁶⁰

As suggested above, appellees and the District Court may have embraced a second or third approach, the

⁵⁸ Gilmer-Aiken Committee, *supra*, n. 15, at 13. Indeed, even though local funding has long been a significant aspect of educational funding, the State has always viewed providing an acceptable education as one of its primary functions. See Texas State Bd. of Educ., *supra*, n. 11, at 1, 7.

⁵⁹ Appellants' Brief, at 35; Reply Brief, at 1.

⁶⁰ An educational finance system might be hypothesized, however, in which the analogy to the wealth discrimination cases would be considerably closer. If elementary and secondary education were made available by the State only to those able to pay a tuition assessed against each pupil, there would be a clearly defined class of "poor" people—definable in terms of their inability to pay the prescribed sum—who would be absolutely precluded from receiving an education. That case would present a far more compelling set of circumstances for judicial assistance than the case before us today. After all, Texas has undertaken to do a good deal more than provide an education to those who can afford it. It has provided what it considers to be an adequate base education for all children and has attempted, though imperfectly, to ameliorate by state funding and by the local assessment program the disparities in local tax resources.

second of which might be characterized as a theory of relative or comparative discrimination based on family income. Appellees sought to prove that a direct correlation exists between the wealth of families within each district and the expenditures therein for education. That is, along a continuum, the poorer the family the lower the dollar amount of education received by the family's children.

The principal evidence adduced in support of this comparative discrimination claim is an affidavit submitted by Professor Joele S. Berke of Syracuse University's Educational Finance Policy Institute. The District Court, relying in major part upon this affidavit and apparently accepting the substance of appellees' theory, noted, first, a positive correlation between the wealth of school districts, measured in terms of assessable property per pupil, and their levels of per-pupil expenditures. Second, the court found a similar correlation between district wealth and the personal wealth of its residents, measured in terms of median family income. 337 F. Supp., at 282, n. 3.

If, in fact, these correlations could be sustained, then it might be argued that expenditures on education—equated by appellees to the quality of education—are dependent on personal wealth. Appellees' comparative discrimination theory would still face serious unanswered questions, including whether a bare positive correlation or some higher degree of correlation⁶¹ is necessary to provide a basis for concluding that the financing system is de-

⁶¹ Also, it should be recognized that median income statistics may not define with any precision the status of individual families within any given district. A more dependable showing of comparative wealth discrimination would also examine factors such as the average income, the mode, and the concentration of poor families in any district.

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signed to operate to the peculiar disadvantage of the comparatively poor,⁶² and whether a class of this size and diversity could ever claim the special protection accorded "suspect" classes. These questions need not be addressed in this case, however, since appellees' proof fails to support their allegations or the District Court's conclusions.

Professor Berke's affidavit is based on a survey of approximately 10% of the school districts in Texas. His findings, set out in the margin,⁶³ show only that the wealthiest few districts in the sample have the highest median family incomes and spend the most on education, and that the several poorest districts have the lowest family incomes and devote the least amount of money to education. For the remainder of the districts—96 districts comprising almost 90% of the sample—the correlation is inverted, *i. e.*, the districts that spend next to the most money on education are populated by families having next to the lowest median family incomes while the districts spending the least have the highest median

⁶² Cf. *Jefferson v. Hackney*, 406 U. S. 535, 547-549 (1972); Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 Yale L. J. 1205, 1258-1259 (1970); Simon, *The School Finance Decisions: Collective Bargaining and Future Finance Systems*, 82 Yale L. J. 409, 439-440 (1973).

<i>Market Value of Taxable Property Per Pupil</i>	<i>Median Family Income in 1960</i>	<i>State & Local Expenditures Per Pupil</i>
Above \$100,000 (10 districts)	\$5,900	\$815
\$100,000-\$50,000 (26 districts)	\$4,425	\$544
\$50,000-\$30,000 (30 districts)	\$4,900	\$483
\$30,000-\$10,000 (40 districts)	\$5,050	\$462
Below \$10,000 (4 districts)	\$3,325	\$305

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family incomes. It is evident that, even if the conceptual questions were answered favorably to appellees, no factual basis exists upon which to found a claim of comparative wealth discrimination.⁶⁴

This brings us, then, to the third way in which the classification scheme might be defined—*district* wealth discrimination. Since the only correlation indicated by the evidence is between district property wealth and expenditures, it may be argued that discrimination might be found without regard to the individual income characteristics of district residents. Assuming a perfect correlation between district property wealth and expenditures from top to bottom, the disadvantaged class might be viewed as encompassing every child in every district except the district that has the most assessable wealth and spends the most on education.⁶⁵ Alternatively, as

⁶⁴ Studies in other States have also questioned the existence of any dependable correlation between a district's wealth measured in terms of assessable property and the collective wealth of families residing in the district measured in terms of median family income. Ridenour & Ridenour, *Serrano v. Priest*: Wealth and Kansas School Finance, 20 Kan. L. 213, 225 (1972) ("it can be argued that there exists in Kansas almost an inverse correlation: districts with highest income per pupil have low assessed value per pupil, and districts with high assessed value per pupil have low income per pupil"); Davis, *Taxpaying Ability: A Study of the Relationship Between Wealth and Income in California Counties*, in *The Challenge of Change in School Finance*, 10th Nat'l Educational Assn. Conf. on School Finance 199 (1967). Note, 81 Yale L. J., *supra*, n. 53. See also Goldstein, *supra*, n. 38, at 522-527.

⁶⁵ Indeed, this is precisely how the plaintiffs in *Serrano v. Priest* defined the class they purported to represent: "Plaintiff children claim to represent a class consisting of all public school pupils in California, 'except children in that school district . . . which . . . affords the greatest educational opportunity of all school districts within California.'" 96 Cal. Rptr. at 604, 487 P. 2d, at 1244, 5 Cal. 3d, at 589. See also *Van Dusartz v. Hatfield*, 334 F. Supp., at 873.

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suggested in Mr. JUSTICE MARSHALL's dissenting opinion, *post*, at —; the class might be defined more restrictively to include children in districts with assessable property which falls below the statewide average, or median, or below some other artificially defined level.

However described, it is clear that appellees' suit asks this Court to extend its most exacting scrutiny to review a system that allegedly discriminates against a large, diverse, and amorphous class, unified only by the common factor of residence in districts that happen to have less taxable wealth than other districts.⁶⁶ The system of alleged discrimination and the class it defines have none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.

We thus conclude that the Texas system does not operate to the peculiar disadvantage of any suspect class. But in recognition of the fact that this Court has never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny, appellees have not relied solely on this contention.⁶⁷ They also assert that the State's system impermissibly interferes with the exercise of a "fundamental" right and that accordingly the prior decisions of this Court require the

⁶⁶ Appellees, however, have avoided describing the Texas system as one resulting merely in discrimination between districts *per se* since this Court has never questioned the State's power to draw reasonable distinctions between political subdivisions within its borders. *Griffin v. County School Board of Prince Edward County*, 377 U. S. 218, 230-231 (1964); *McGowan v. Maryland*, 366 U. S. 420, 427 (1961); *Salsburg v. Maryland*, 346 U. S. 545, 552 (1954).

⁶⁷ *E. g.*, *Harper v. Virginia Bd. of Elections*, 383 U. S. 663 (1966); *United States v. Kras*, — U. S. — (1972). See Mr. JUSTICE MARSHALL's dissenting opinion, *post*, pp. ———.

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application of the strict standard of judicial review. *Graham v. Richardson*, 403 U. S. 365, 375-376 (1971); *Kramer v. Union Free School District*, 395 U. S. 621 (1969); *Shapiro v. Thompson*, 394 U. S. 618 (1969). It is this question—whether education is a fundamental right, in the sense that it is among the rights and liberties protected by the Constitution—which has so consumed the attention of courts and commentators in recent years.⁶⁸

B

In *Brown v. Board of Education*, 347 U. S. 483 (1954), a unanimous Court recognized that “education is perhaps the most important function of state and local governments.” *Id.*, at 493. What was said there in the context of racial discrimination has lost none of its vitality with the passage of time:

“Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environ-

⁶⁸ See *Serrano v. Priest*, 96 Cal. Rptr. 601, 487 P. 2d 1241, 5 Cal. 3d 584 (1971); *Van Duzart v. Hatfield*, 344 F. Supp. 870 (Minn. 1971); *Robinson v. Cahill*, 118 N. J. Super. 223, 287 A. 2d 187 (1972); J. Coons, W. Clune, and S. Sugarman, *supra*, n. 13, at 339-394; Goldstein, *supra*, n. 38, at 534-541; Vieira, Unequal Educational Expenditures: Some Minority Views on *Serrano v. Priest*, 37 Mo. L. Rev. 617, 618-624 (1972); Comment, Educational Financing, Equal Protection of the Laws, and the Supreme Court, 70 Mich. L. Rev. 1324, 1335-1342 (1972); Note, The Public School Financing Cases: Interdistrict Inequalities and Wealth Discrimination, 14 Ariz. L. Rev. 88, 120-124 (1972).

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ment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. "Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Ibid.*

This theme, expressing an abiding respect for the vital role of education in a free society, may be found in numerous opinions of Justices of this Court writing both before and after *Brown* was decided. *Wisconsin v. Yoder*, 406 U. S. 205, 213 (THE CHIEF JUSTICE), 237, 238-239 (MR. JUSTICE WHITE) (1972); *Abington School Dist. v. Schempp*, 374 U. S. 203, 230 (1963) (MR. JUSTICE BRENNAN); *McCollum v. Bd. of Education*, 333 U. S. 203, 212 (1948) (Mr. Justice Frankfurter); *Pierce v. Society of Sisters*, 268 U. S. 510 (1925); *Meyer v. Nebraska*, 262 U. S. 390 (1923); *Interstate Consolidated Street Ry. v. Massachusetts*, 207 U. S. 79 (1907).

Nothing this Court holds today in any way detracts from our historic dedication to public education. We are in complete agreement with the conclusion of the three-judge panel below that "the grave significance of education both to the individual and to our society" cannot be doubted.⁶⁹ But the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause. Mr. Justice Harlan, dissenting from the Court's application of strict scrutiny to a law impinging upon the right of interstate travel, admonished that "[v]irtually every state statute affects important rights." *Shapiro v. Thompson*, 394 U. S. 618, 655, 661 (1969). In his view, if the degree of judicial scrutiny of state legislation fluctuated de-

⁶⁹ 337 F. Supp., at 283.

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pending on a majority's view of the importance of the interest affected, we would have gone "far toward making this Court a 'super-legislature.'" *Ibid.* We would indeed then be assuming a legislative role and one for which the Court lacks both authority and competence. But MR. JUSTICE STEWART's response in *Shapiro* to Mr. Justice Harlan's concern correctly articulates the limits of the fundamental rights rationale employed in the Court's equal protection decisions:

"The Court today does *not* 'pick out particular human activities, characterize them as "fundamental," and give them added protection. . . .' To the contrary, the Court simply recognizes, as it must, an established constitutional right, and gives to that right no less protection than the Constitution itself demands." 394 U. S., at 642. (Emphasis from original.)

MR. JUSTICE STEWART's statement serves to underline what the opinion of the Court in *Shapiro* makes clear. In subjecting to strict judicial scrutiny state welfare eligibility statutes that imposed a one-year durational residency requirement as a precondition to receiving AFDC benefits, the Court explained:

"in moving from State to State . . . appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional." *Id.*, at 634. (Emphasis from original.)

The right to interstate travel had long been recognized as a right of constitutional significance,⁷⁰ and the Court's

⁷⁰ E. g., *United States v. Guest*, 383 U. S. 745, 757-759 (1966); *Oregon v. Mitchell*, 400 U. S. 112, 229, 237-238 (1970) (opinion of JUSTICES BRENNAN, WHITE, and MARSHALL).

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decision therefore did not require an *ad hoc* determination as to the social or economic importance of that right.⁷¹

Lindsey v. Normet, 405 U. S. 56 (1972), decided only last Term, firmly reiterates that social importance is not the critical determinant for subjecting state legislation to strict scrutiny. The complainants in that case, involving a challenge to the procedural limitations imposed on tenants in suits brought by landlords under Oregon's Forcible Entry and Wrongful Detainer Law, urged the Court to examine the operation of the statute under "a more stringent standard than mere rationality." *Id.*, at 73. The tenants argued that the statutory limitations implicated "fundamental interests which are particularly important to the poor," such as the "need for decent shelter" and the "right to retain peaceful possession of one's home." *Ibid.* MR. JUSTICE WHITE'S analysis, in his opinion for the Court, is instructive:

"We do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality or any recognition of the right of a tenant to occupy the real property of his landlord beyond the term of his lease, without the payment of rent *Absent constitutional mandate*, the assurance of adequate

⁷¹ After *Dandridge v. Williams*, 397 U. S. 471 (1970), there could be no lingering question about the constitutional foundation for the Court's holding in *Shapiro*. In *Dandridge* the Court applied the rational basis test in reviewing Maryland's maximum family grant provision under its AFDC program. A federal district court held the provision unconstitutional, applying a stricter standard of review. In the course of reversing the lower court, the Court distinguished *Shapiro* properly on the ground that in that case "the Court found state interference with the constitutionally protected freedom of interstate travel." *Id.*, at 484 n. 16.

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housing and the definition of landlord-tenant relationships are legislative, not judicial, functions." *Id.*, at 74. (Emphasis supplied.)

Similarly, in *Dandridge v. Williams*, 397 U. S. 471 (1970), the Court's explicit recognition of the fact that the "administration of public welfare assistance . . . involves the most basic economic needs of impoverished human beings," *id.*, at 485,⁷² provided no basis for departing from the settled mode of constitutional analysis of legislative classifications involving questions of economic and social policy. As in the case of housing, the central importance of welfare benefits to the poor was not an adequate foundation for requiring the State to justify its law by showing some compelling state interest. See also *Jefferson v. Hackney*, 406 U. S. 535 (1972); *Richardson v. Belcher*, 404 U. S. 78 (1971).

The lesson of these cases in addressing the question now before the Court is plain. It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution. *Eisenstadt v. Baird*, 405 U. S. 438 (1972);⁷³

⁷² The Court refused to apply the strict scrutiny test despite its contemporaneous recognition in *Goldberg v. Kelly*, 397 U. S. 254, 264 (1970) that "welfare provides the means to obtain essential food, clothing, housing, and medical care."

⁷³ In *Eisenstadt*, the Court struck down a Massachusetts statute that prohibited the distribution of contraceptive devices, finding that the law failed "to satisfy even the more lenient equal protection standard." *Id.*, at 447 n. 7. Nevertheless, in *dictum*, the Court

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Dunn v. Blumstein, 405 U. S. 330 (1972);⁷⁴ *Police Department of the City of Chicago v. Mosley*, 408 U. S. 92 (1972);⁷⁵ *Skinner v. Oklahoma*, 316 U. S. 535 (1942).⁷⁶

Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.

recited the correct form of equal protection analysis: "if we were to conclude that the Massachusetts statute impinges upon fundamental freedoms under *Griswold* [*v. Connecticut*, 381 U. S. 479 (1965)], the statutory classification would have to be not merely rationally related to a valid public purpose but necessary to the achievement of a compelling state interest." *Ibid.* (emphasis from original).

⁷⁴ *Dunn* fully canvasses this Court's voting rights cases and explains that "this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Id.* at 336 (emphasis supplied). The constitutional underpinnings of the right to equal treatment in the voting process can no longer be doubted even though, as the Court noted in *Harper v. Virginia Bd. of Elections*, 383 U. S. 663, 665 (1966), "the right to vote in state elections is nowhere expressly mentioned." See *Oregon v. Mitchell*, 400 U. S. 112, 135, 138-144 (Mr. Justice Douglas), 229 241-242 (Opinion of Justices Brennan, White, and Marshall) (1970); *Bullock v. Carter*, 405 U. S. 134, 140-144 (1972); *Kramer v. Union Free School District*, 395 U. S. 621, 625-630 (1969); *Williams v. Rhodes*, 393 U. S. 23, 29, 30-31 (1968); *Reynolds v. Sims*, 377 U. S. 533, 554-562 (1964); *Gray v. Sanders*, 372 U. S. 368, 379-381 (1963).

⁷⁵ In *Mosley*, the Court struck down a Chicago antipicketing ordinance that exempted labor picketing from its prohibitions. The ordinance was held invalid under the Equal Protection Clause after subjecting it to careful scrutiny and finding that the ordinance was not narrowly drawn. The stricter standard of review was appropriately applied since the ordinance was one "affecting First Amendment interests." *Id.* at 101.

⁷⁶ *Skinner* applied the standard of close scrutiny to a state law permitting forced sterilization of "habitual criminals." Implicit in the Court's opinion is the recognition that the right of procreation is among the rights of personal privacy protected under the Constitution. See *Roe v. Wade*, — U. S. —, — (1973).

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As we have said, the undisputed importance of education will not alone cause this Court to depart from the usual standard for reviewing a State's social and economic legislation. It is appellees' contention, however, that education is distinguishable from other services and benefits provided by the State because it bears a peculiarly close relationship to other rights and liberties accorded protection under the Constitution. Specifically, they insist that education is itself a fundamental personal right because it is essential to the effective exercise of First Amendment freedoms and to intelligent utilization of the right to vote. In asserting a nexus between speech and education, appellees urge that the right to speak is meaningless unless the speaker is capable of articulating his thoughts intelligently and persuasively. The "marketplace of ideas" is an empty forum for those lacking basic communicative tools. Likewise, they argue that the corollary right to receive information⁷⁷ becomes little more than a hollow privilege when the recipient has not been taught to read, assimilate, and utilize available knowledge.

A similar line of reasoning is pursued with respect to the right to vote.⁷⁸ Exercise of the franchise, it is contended, cannot be divorced from the educational foundation of the voter. The electoral process, if reality is to conform to the democratic ideal, depends on an in-

⁷⁷ See, e. g., *Red Lion Broadcasting Co. v. FCC*, 395 U. S. 367, 389-390 (1969); *Stanley v. Georgia*, 394 U. S. 557, 564 (1969); *Lamont v. Postmaster General*, 381 U. S. 301, 306-307 (1965).

⁷⁸ Since the right to vote, *per se*, is not a constitutionally protected right, we assume that appellees' references to that right are simply shorthand references to the protected right, implicit in our constitutional system, to participate in state elections on an equal basis with other qualified voters whenever the State has adopted an elective process for determining who will represent any segment of the State's population. See n. 74, *supra*.

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formed electorate: a voter cannot cast his ballot intelligently unless his reading skills and thought processes have been adequately developed.

X We need not dispute any of these propositions. The Court has long afforded zealous protection against unjustifiable governmental interference with the individual's rights to speak and to vote. Yet we have never presumed to possess either the ability or the authority to guarantee to the citizenry the most *effective* speech or the most *informed* electoral choice. That these may be desirable goals of a system of freedom of expression and of a representative form of government is not to be doubted.⁷⁹ These are indeed goals to be pursued by a people whose thoughts and beliefs are freed from governmental interference. But they are not values to be implemented by judicial intrusion into otherwise legitimate state activities.

Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditure in Texas provide an education that falls short. Whatever merit appellees' argument might have if a

⁷⁹ The States have often pursued their entirely legitimate interest in assuring "intelligent exercise of the franchise," *Katzenbach v. Morgan*, 384 U. S. 641, 655 (1966), through such devices as literacy tests and age restrictions on the right to vote. See *ibid.*; *Oregon v. Mitchell*, 400 U. S. 112 (1970). And, where those restrictions have been found to promote intelligent use of the ballot without discriminating against those racial and ethnic minorities previously deprived of an equal educational opportunity, this Court has upheld their use. Compare *Lassiter v. Northampton County Bd. of Elections*, 360 U. S. 45 (1959), with *Oregon v. Mitchell*, 400 U. S., at 133 (Mr. Justice Black), 135, 144-147 (Mr. Justice Douglas), 152, 216-217 (Mr. Justice Harlan), 229, 231-236 (Opinion of Justices BRENNAN, WHITE, and MARSHALL), 281, 282-284 (Mr. Justice STEWART), and *Gaston County v. United States*, 395 U. S. 285 (1969).

State's financing system occasioned an absolute denial of educational opportunities to any of its children, that argument provides no basis for finding an interference with fundamental rights where only relative differences in spending levels are involved and where—as is true in the present case—no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process.

Furthermore, the logical limitations on appellees' nexus theory are difficult to perceive. How, for instance, is education to be distinguished from the significant personal interests in the basics of decent food and shelter? Empirical examination might well buttress an assumption that the ill-fed, ill-clothed, and ill-housed are among the most ineffective participants in the political process and that they derive the least enjoyment from the benefits of the First Amendment.⁸⁰ If so appellees' thesis would cast serious doubt on the authority of *Dandridge v. Williams*, *supra*, and *Lindsey v. Normet*, *supra*.

We have carefully considered each of the arguments supportive of the District Court's finding that education is a fundamental right or liberty and have found those arguments unpersuasive. In one further respect we find this a particularly inappropriate case in which to subject state action to strict judicial scrutiny. The present case, in another basic sense, is significantly different from any of the cases in which the Court has applied strict scrutiny to state or federal legislation touching upon constitutionally protected rights. Each of

⁸⁰ See Schoettle, The Equal Protection Clause in Public Education, 71 Col. L. Rev. 1355, 1389-1390 (1971); Vieira, *supra*, n. 68, at 622-623; Comment, Tenant Interest Representation: Proposal for a National Tenants' Association, 47 Tex. L. Rev. 1160, 1172-1173 n. 61 (1969).

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our prior cases involved legislation which "deprived," "infringed," or "interfered" with the free exercise of some such fundamental personal right or liberty. See *Skinner v. Oklahoma*, *supra*, at 536; *Shapiro v. Thompson*, *supra*, at 634; *Dunn v. Blumstein*, *supra*, at 338-343. A critical distinction between those cases and the one now before us lies in what Texas is endeavoring to do with respect to education. MR. JUSTICE BRENNAN, writing for the Court in *Katzenbach v. Morgan*, 384 U. S. 641 (1966), expresses well the salient point:⁸¹

"This is not a complaint that Congress . . . has unconstitutionally denied or diluted anyone's right to vote but rather that Congress violated the Constitution by not extending the relief effected [to others similarly situated]

"[The federal law in question] does not restrict or deny the franchise but in effect extends the franchise to persons who otherwise would be denied it by state law. . . . We need decide only whether the challenged limitation on the relief effected . . . was permissible. In deciding that question, the principle that calls for the closest scrutiny of distinctions in laws *denying* fundamental rights . . . is inapplicable; for the distinction challenged by appellees is presented only as a limitation on a reform

⁸¹ *Katzenbach v. Morgan* involved a challenge by registered voters in New York City to a provision of the Voting Rights Act of 1965 that prohibited enforcement of a state law calling for English literacy tests for voting. The law was suspended as to residents from Puerto Rico who had completed at least six years of education at an "American-flag" school in that country even though the language of instruction was other than English. This Court upheld the questioned provision of the 1965 Act over the claim that it discriminated against those with a sixth grade education obtained in non-English-speaking schools other than the ones designated by the federal legislation.

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measure aimed at eliminating an existing barrier to the exercise of the franchise. Rather, in deciding the constitutional propriety of the limitations in such a reform measure we are guided by the familiar principles that a 'statute is not invalid under the Constitution because it might have gone farther than it did,' . . . that a legislature need not 'strike at all evils at the same time,' and that 'reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind' " *Id.*, at 656-657. (Emphasis from original.)

The Texas system of school finance is not unlike the federal legislation involved in *Katzenbach* in this regard. Every step leading to the establishment of the system Texas utilizes today—including the decisions permitting localities to tax and expend locally, and creating and continuously expanding state aid—was implemented in an effort to *extend* public education and to improve its quality.⁸² Of course, every reform that benefits some more than others may be criticized for what it fails to accomplish. But we think it plain that, in substance, the thrust of the Texas system is affirmative and reformatory and, therefore, should be scrutinized under judicial principles sensitive to the nature of the State's efforts and to the rights reserved to the States under the Constitution.⁸³

C

It should be clear, for the reasons stated above and in accord with the prior decisions of this Court, that

⁸² Cf. *Meyer v. Nebraska*, 262 U. S. 390 (1923); *Pierce v. Society of Sisters*, 268 U. S. 510 (1925); *Hargrove v. Kirk*, 313 F. Supp. 944 (MD Fla. 1970), vacated, 401 U. S. 476 (1971).

⁸³ See *Schillb v. Kuebel*, 404 U. S. 357 (1971); *McDonald v. Bd. of Election Comm'rs*, 394 U. S. 802 (1969).

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this is not a case in which the challenged state action must be subjected to the searching judicial scrutiny reserved for laws that create suspect classifications or impinge upon constitutionally protected rights.

We need not rest our decision, however, solely on the inappropriateness of the strict scrutiny test. A century of Supreme Court adjudication under the Equal Protection Clause affirmatively supports the application of the traditional standard of review, which requires only that the State's system be shown to bear some rational relationship to legitimate state purposes. This case represents far more than a challenge to the manner in which Texas provides for the education of its children. We have here nothing less than a direct attack on the way in which Texas has chosen to raise and disburse state and local tax revenues. We are asked to condemn the State's judgment in conferring on political subdivisions the power to tax local property to supply revenues for local interests. In so doing, appellees would have the Court intrude in an area in which it has traditionally deferred to state legislatures.⁵⁴ This Court has often admonished against such interferences with the State's fiscal policies under the Equal Protection Clause:

"The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. . . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. . . . It has . . . been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since

⁵⁴ See, e. g., *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232 (1890); *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495, 508-509 (1937); *Allied Stores of Ohio, Inc. v. Bowers*, 358 U. S. 522 (1959).

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the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . ." *Madden v. Kentucky*, 309 U. S. 83, 87-88 (1940).

See also *Lehnhausen v. Lake Shore Auto Parts Co.*, — U. S. — (1973); *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435, 445 (1940).

Thus we stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favor of some other form of taxation. No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.⁸⁵

⁸⁵ Those who urge that the present system be invalidated offer little guidance as to what type of school financing should replace it. The most likely result of rejection of the existing system would be statewide financing of all public education with funds derived from taxation of property or from the adoption or expansion of sales and income taxes. See *Simon, supra*, n. 62. The authors of *Private Wealth and Public Education, supra*, n. 13, at 201-242, suggest an alternative scheme, known as "district power equalizing." In simplest terms, the State would guarantee that at any particular rate of property taxation the district would receive a stated number of

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In addition to matters of fiscal policy, this case also involves the most persistent and difficult questions of educational policy, another area in which this Court's lack of specialized knowledge and experience counsels against premature interference with the informed judgments made at the state and local levels. Education, perhaps even more than welfare assistance, presents a myriad of "intractable economic, social, and even philosophical problems." *Dandridge v. Williams*, 397 U. S., at 487. The very complexity of the problems of financing and managing a statewide public school system suggest that "there will be more than one constitutionally permissible method of solving them," and that, within the limits of rationality, "the legislature's efforts to tackle the problems" should be entitled to respect. *Jefferson v. Hackney*, 406 U. S. 535, 546-547 (1972). On even the most basic questions in this area the scholars and educational experts are divided. Indeed, one of the hottest sources of controversy concerns the extent to which there is a demonstrable correlation between

dollars regardless of the district's tax base. To finance the subsidies to "poorer" districts, funds would be taken away from the "wealthier" districts that, because of their higher property values, collect more than the stated amount at any given rate. This is not the place to weigh the arguments for and against "district power equalizing," beyond noting that commentators are in disagreement as to whether it is feasible, how it would work, and indeed whether it would violate the equal protection theory underlying appellees' case. President's Comm'n on School Finance, *Schools, People & Money* 32-33 (1972); Bateman & Brown, *Some Reflections on Serrano v. Priest*, 49 J. Urban L. 701, 706-708 (1972); Brest, *Book Review*, 23 Stan. L. Rev. 591, 594-596 (1971); Goldstein, *supra*, n. 38, at 542-543; Wise, *School Finance Equalization Lawsuits: A Model Legislative Response*, 2 Yale Rev. of L. & Soc. Action 123, 125 (1971); Silard & White, *Intrastate Inequalities in Public Education: The Case for Judicial Relief Under the Equal Protection Clause*, 1970 Wis. L. Rev. 7, 29-30.

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educational expenditures and the quality of education⁸⁶—an assumed correlation underlying virtually every legal conclusion drawn by the District Court in this case. Related to the questioned relationship between cost and quality is the equally unsettled controversy as to the proper goals of a system of public education.⁸⁷ And the question regarding the most effective relationship between state boards of education and local school boards, in terms of their respective responsibilities and degrees of control, is now undergoing searching re-examination. The ultimate wisdom as to these and related problems of education is not likely to be divined for all time even by the scholars who now so earnestly debate the issues. In such circumstances the judiciary is well advised to refrain from interposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever changing conditions.

It must be remembered also that every claim arising under the Equal Protection Clause has implications for

⁸⁶ The quality-cost controversy has received considerable attention. Among the notable authorities on both sides are the following: C. Jencks, *Inequality* (1972); C. Silberman, *Crisis in the Classroom* (1970); Office of Education, *Equality of Educational Opportunity* (1966) (The Coleman Report); *On Equality of Educational Opportunity* (1972) (Moynihan & Mosteller eds.); J. Guthrie, G. Kleindorfer, H. Levin, & R. Stout, *Schools and Inequality* (1969); President's Comm'n on School Finance, *supra*, n. 85; Swanson, *The Cost-Quality Relationship*, in *The Challenge of Change in School Finance*, 10th Nat'l Educational Ass'n. Conf. on School Finance 151 (1967).

⁸⁷ See the results of the Texas Governor's Committee's statewide survey on the goals of education in that State. I Governor's Committee Report, at 59-68. See also Goldstein, *supra*, n. 38, at 519-522; Schoettle, *supra*, n. 80; authorities cited in n. 86, *supra*.

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the relationship between national and state power under our federal system. Questions of federalism are always inherent in the process of determining whether a State's laws are to be accorded the traditional presumption of constitutionality, or are to be subjected instead to rigorous judicial scrutiny. While "[t]he maintenance of the principles of federalism is a foremost consideration in interpreting any of the pertinent provisions under which this Court examines state action,"⁸⁸ it would be difficult to imagine a case having a greater potential impact on our federal system than the one now before us, in which we are urged to abrogate systems of financing public education presently in existence in virtually every State.

The foregoing considerations buttress our conclusion that Texas' system of public school finance is an inappropriate candidate for strict judicial scrutiny. These same considerations are relevant to the determination whether that system, with its conceded imperfections, nevertheless bears some rational relationship to a legitimate state purpose. It is to this question that we next turn our attention.

III

The basic contours of the Texas school finance system have been traced at the outset of this opinion. We will now describe in more detail that system and how it operates, as these facts bear directly upon the demands of the Equal Protection Clause.

Apart from federal assistance, each Texas school receives its funds from the State and from its local school district. On a statewide average, a roughly comparable

⁸⁸ *Allied Stores of Ohio, Inc. v. Bowers*, 358 U. S. 522, 530, 532 (1959) (Mr. Justice Brennan, concurring); *Katzenbach v. Morgan*, 384 U. S. 641, 659, 661 (1966) (Mr. Justice Harlan, dissenting).

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amount of funds is derived from each source.⁸⁹ The State's contribution, under the Minimum Foundation Program, was designed to provide an adequate minimum educational offering in every school in the State. Funds are distributed to assure that there will be one teacher—compensated at the state-supported minimum salary—for every 25 students.⁹⁰ Each school district's other supportive personnel are provided for: one principal for every 30 teachers;⁹¹ one "special service" teacher—librarian, nurse, doctor, etc.—for every 20 teachers;⁹² superintendents, vocational instructors, counselors, and educators for exceptional children are also provided.⁹³ Additional funds are earmarked for current operating expenses, for student transportation,⁹⁴ and for free textbooks.⁹⁵

The program is administered by the State Board of Education and by the Central Education Agency, which also have responsibility for school accreditation⁹⁶ and for monitoring the statutory teacher qualification standards.⁹⁷ As reflected by the 62% increase in funds allotted to the Edgewood School District over the last three years,⁹⁸ the State's financial contribution to education is steadily increasing. None of Texas' school districts, how-

⁸⁹ In 1970 Texas expended approximately 2.1 billion dollars for education and a little over one billion came from the Minimum Foundation Program. Texas Research League, *supra*, n. 20, at 2.

⁹⁰ Tex. Educ. Code § 16.13 (1972).

⁹¹ *Id.*, § 16.18.

⁹² *Id.*, § 16.15.

⁹³ *Id.*, §§ 16.16, 16.17, 16.19.

⁹⁴ *Id.*, §§ 16.45, 16.51–16.63.

⁹⁵ *Id.*, §§ 12.01–12.04.

⁹⁶ *Id.*, § 11.26 (5).

⁹⁷ *Id.*, § 16.301 *et seq.*

⁹⁸ See *ante*, at 9–10.

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ever, has been content to rely alone on funds from the Foundation Program.

By virtue of the obligation to fulfill its local Fund Assignment, every district must impose an *ad valorem* tax on property located within its borders. The Fund Assignment was designed to remain sufficiently low to assure that each district would have some ability to provide a more enriched educational program.⁹⁹ Every district supplements its foundation grant in this manner. In some districts the local property tax contribution is insubstantial, as in Edgewood where the supplement was only \$26 per pupil in 1967. In other districts the local share may far exceed even the total Foundation grant. In part, local differences are attributable to differences in the rates of taxation or in the degree to which the market value for any category of property varies from its assessed value.¹⁰⁰ The greatest interdistrict disparities, however, are attributable to differences in the amount of assessable property available within any district. Those districts that have more property, or more valuable property, have a greater capability for supplementing state funds. In large measure, these additional local revenues are devoted to paying higher salaries to more teachers. Therefore, the primary distinguishing attributes of schools in property-affluent districts are lower pupil-teacher ratios and higher salary schedules.¹⁰¹

⁹⁹ Gilmer-Aiken Committee, *supra*, n. 15, at 15.

¹⁰⁰ There is no uniform statewide assessment practice in Texas. Commercial property, for example, might be taxed at 30% of market value in one county and at 50% in another. V Governor's Committee Report, at 25-26; Berke, Carnevale, Morgan & White, *supra*, n. 29, at 666-667 n. 16.

¹⁰¹ Texas Research League, *supra*, n. 20, at 18. Texas, in this regard, is not unlike most other States. One commentator has observed that "disparities in expenditures appear to be largely ex-

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This, then, is the basic outline of the Texas finance structure. Because of differences in expenditure levels occasioned by disparities in property tax income, appellees claim that children in less affluent districts have been made the subject of invidious discrimination. The District Court found that the State had failed even "to establish a reasonable basis" for a system that results in different levels of per pupil expenditure. 337 F. Supp., at 284. We disagree.

plained by variations in teacher salaries." Simon, *supra*, n. 62, at 413.

As previously noted, text accompanying n. 86, *supra*, the extent to which the quality of education varies with expenditure per pupil is debated inconclusively by the most thoughtful students of public education. While all would agree that there is a correlation up to the point of providing the recognized essentials in facilities and academic opportunities, the issues of greatest disagreement include the effect on the quality of education of pupil-teacher ratios and of higher teacher salary schedules. *E. g.*, Office of Education, *supra*, n. 86, at 316-319. The state funding in Texas is designed to assure, on the average, one teacher for every 25 students, which is considered to be a favorable ratio by most standards. Whether the minimum salary of \$6,000 per year is sufficient in Texas to attract qualified teachers may be more debatable, depending in major part upon the location of the school district. But there appears to be little empirical data that supports the advantage of any particular pupil-teacher ratio or that documents the existence of a dependable correlation between the level of public school teachers' salaries and the quality of their classroom instruction. An intractable problem in dealing with teachers' salaries is the absence, up to this time, of satisfactory techniques for judging their ability or performance. Relatively few school systems have merit plans of any kind, with the result that teachers' salaries are usually increased across the board in a way which tends to reward the least deserving on the same basis as the most deserving. Salaries are usually raised automatically on the basis of length of service and according to predetermined "steps," extending over 10-to-12 year periods.

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In its reliance on state as well as local resources, the Texas system is comparable to the systems employed in virtually every other State.¹⁰² The power to tax local property for educational purposes has been recognized in Texas at least since 1883.¹⁰³ When the growth of commercial and industrial centers and accompanying shifts in population began to create disparities in local resources, Texas undertook a program calling for a considerable investment of state funds.

The "foundation grant" theory upon which Texas educators based the Gilmer-Aiken bills, was a product of the pioneering work of two New York educational reformers in the 1920's, George D. Strayer and Robert M. Haig.¹⁰⁴ Their efforts were devoted to establishing a means of guaranteeing a minimum statewide educational program without sacrificing the vital element of local

¹⁰² President's Comm'n on School Finance, *supra*, n. 85, at 9. Until recently, Hawaii was the only State that maintained a purely state-funded educational program. In 1968, however, that State amended its educational finance statute to permit counties to collect additional funds locally and spend those amounts on its schools. The rationale for that recent legislative choice is instructive on the question before the Court today:

"Under existing law, counties are precluded from doing anything in this area, even to spend their own funds if they so desire. This corrective legislation is urgently needed in order to allow counties to go above and beyond the State's standards and provide educational facilities as good as the people of the counties want and are willing to pay for. Allowing local communities to go above and beyond established minimums provided for their people encourages the best features of democratic government." Haw. Sess. Laws, Art. 38, § 1 (1968).

¹⁰³ See text accompanying n. 7, *supra*.

¹⁰⁴ G. Strayer & R. Haig, *The Financing of Education in the State of New York* (1923). For a thorough analysis of the contribution of these reformers and of the prior and subsequent history of educational finance, see J. Coons, W. Clune & S. Sugarman, *supra*, n. 13, at 39-95.

participation. The Strayer-Haig thesis represented an accommodation between these two competing forces. As articulated by Professor Coleman:

"The history of education since the industrial revolution shows a continual struggle between two forces: the desire by members of society to have educational opportunity for all children, and the desire of each family to provide the best education it can afford for its own children."¹⁰⁵

The Texas system of school finance is responsive to these two forces. While assuring a basic education for every child in the State, it permits and encourages a large measure of participation in and control of each district's schools at the local level. In an era that has witnessed a consistent trend toward centralization of the functions of government, local sharing of responsibility for public education has survived. The merit of local control was recognized last Term in both the majority and dissenting opinions in *Wright v. Council of the City of Emporia*, 407 U. S. 451 (1972). MR. JUSTICE STEWART stated there that "[d]irect control over decisions vitally affecting the education of one's children is a need that is strongly felt in our society." *Id.*, at 469. THE CHIEF JUSTICE, in his dissent, agreed that "[l]ocal control is not only vital to continued public support of the schools, but it is of overriding importance from an educational standpoint as well." *Id.*, at 478.

The persistence of attachment to government at the lowest level where education is concerned reflects the depth of commitment of its supporters. In part, local control means, as Professor Coleman suggests, the freedom to devote more money to the education of one's children. Equally important, however, is the opportunity

¹⁰⁵ J. Coons, W. Clune & S. Sugarman, *supra*, n. 13, Foreword by James S. Coleman, at vii.

it offers for participation in the decision-making process that determines how those local tax dollars will be spent. Each locality is free to tailor local programs to local needs. Pluralism also affords some opportunity for experimentation, innovation, and a healthy competition for educational excellence. An analogy to the Nation-State relationship in our federal system seems uniquely appropriate. Mr. Justice Brandeis identified as one of the peculiar strengths of our form of government each State's freedom to "serve as a laboratory . . . and try novel social and economic experiments."¹⁰⁶ No area of social concern stands to profit more from a multiplicity of viewpoints and from a diversity of approaches than does public education.

Appellees do not question the propriety of Texas' dedication to local control of education. To the contrary, they attack the school finance system precisely because, in their view it does not provide the same level of local control and fiscal flexibility in all districts. Appellees suggest that local control could be preserved and promoted under other financing systems that resulted in more equality in educational expenditures. While it is no doubt true that reliance on local property taxation for school revenues provides less freedom of choice with respect to expenditures for some districts than for others,¹⁰⁷

¹⁰⁶ *New State Ice Co. v. Leibmann*, 285 U. S. 262, 280, 311 (1932).

¹⁰⁷ MR. JUSTICE WHITE suggests in his dissent that the Texas system violates the Equal Protection Clause because the means it has selected to effectuate its interest in local autonomy fail to guarantee complete freedom of choice to every district. He places special emphasis on the statutory provision that establishes a maximum rate of \$1.50 per \$100 valuation at which a local school district may tax for school maintenance. Tex. Educ. Code § 20.04 (d) (1972). The maintenance rate in Edgewood when this case was litigated in the District Court was \$.55 per \$100, barely one-third of the allowable rate. (The tax rate of \$1.05 per \$100, see p. 7, *supra*, is the equalized

the existence of "some inequities" which the State's rationale provides a sufficient basis for striking down. *McGowan v. Maryland*, 366 U. S. 396. It may not be condemned if it effectuates the State's goals. *U. S.*, at 485. Nor must it be, as appellees suggest, because it serves the State's interest, where disparities in expenditures impinge on the mental constitutional right to have chosen the least restrictive means. *U. S.* v. *Blumstein*, 405 U. S. 430. *Tucker*, 364 U. S. 479, 480. We remember that even though the State has the ability to make free decisions about how much it spends on education, it is not to be denied a large measure of freedom in how funds will be allocated. It is not to be denied to make numerous other decisions in the operation of the schools.

rate for maintenance and for not claim that the ceiling provision is unconstitutional in any other Texas case. If that statutory provision is unconstitutional in a case in which it is not, it is unconstitutional in all cases. 313 F. Supp. 944 (MD Fla. 1970).

¹⁰⁸ MR. JUSTICE MARSHALL suggests that the State's asserted interest in local control is not a legitimate interest. p. 60, and that it has been rejected by the Court but "as an excuse . . . for the State's failure to do what it possibly better served under the Constitution. It is not to be found irrelevant for purposes of the Equal Protection Clause. It is said to be supported by a long history of state action. The dissent suggests that Texas'

the existence of "some inequality" in the manner in which the State's rationale is achieved is not alone a sufficient basis for striking down the entire system. *McGowan v. Maryland*, 366 U. S. 420, 425-426 (1961). It may not be condemned simply because it imperfectly effectuates the State's goals. *Dandridge v. Williams*, 397 U. S., at 485. Nor must the financing system fail because, as appellees suggest, other methods of satisfying the State's interest, which occasion "less drastic" disparities in expenditures, might be conceived. Only where state action impinges on the exercise of fundamental constitutional rights or liberties must it be found to have chosen the least restrictive alternative. Cf. *Dunn v. Blumstein*, 405 U. S. 330, 343 (1972); *Shelton v. Tucker*, 364 U. S. 479, 488 (1960). It is also well to remember that even those districts that have reduced ability to make free decisions with respect to how much they spend on education still retain under the present system a large measure of authority as to how available funds will be allocated. They further enjoy the power to make numerous other decisions with respect to the operation of the schools.¹⁰⁵ The people of Texas may be

rate for maintenance and for the retirement of bonds.) Appellees do not claim that the ceiling presently bars desired tax increases in Edgewood or in any other Texas district. Therefore, the constitutionality of that statutory provision is not before us and must await litigation in a case in which it is properly presented. Cf. *Hargrave v. Kirk*, 313 F. Supp. 944 (MD Fla. 1970), vacated, 401 U. S. 476 (1971).

¹⁰⁵ Mr. Justice Marshall states in his dissenting opinion that the State's asserted interest in local control is a "mere sham," *post*, p. 60, and that it has been offered not as a legitimate justification but "as an excuse . . . for interdistrict inequality." *Id.*, at 56. In addition to asserting that local control would be preserved and possibly better served under other systems—a consideration that we find irrelevant for purpose of deciding whether the system may be said to be supported by a legitimate and reasonable basis—the dissent suggests that Texas' lack of good faith may be demonstrated

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justified in believing that other systems of school finance, which place more of the financial responsibility in the hands of the State, will result in a comparable lessening of desired local autonomy. That is, they may believe that along with increased control of the purse strings

by examining the extent to which the State already maintains considerable control. The State, we are told, regulates "the most minute details of local public education," *ibid.*, including textbook selection, teacher qualifications, and the length of the school day. This assertion, that genuine local control does not exist in Texas, simply cannot be supported. It is abundantly refuted by the elaborate statutory division of responsibilities set out in the Texas Education Code. Although policy decision-making and supervision in certain areas are reserved to the State, the day-to-day authority over the "management and control" of all public elementary and secondary schools is squarely placed on the local school boards. Tex. Educ. Code §§ 17.01, 23.26 (1972). Among the innumerable specific powers of the local school authorities are the following: the power of eminent domain to acquire land for the construction of school facilities, *id.*, §§ 17.26, 23.26; the power to hire and terminate teachers and other personnel, *id.*, §§ 13.101-13.103; the power to designate conditions of teacher employment and to establish certain standards of educational policy, *id.*, § 13.901; the power to maintain order and discipline, *id.*, § 21.305, including the prerogative to suspend students for disciplinary reasons, *id.*, § 21.301; the power to decide whether to offer a kindergarten program, *id.*, §§ 21.131-21.135, or a vocational training program, *id.*, § 21.111, or a program of special education for the handicapped, *id.*, § 11.16; the power to control the assignment and transfer of students, *id.*, §§ 21.074-21.080; and the power to operate and maintain a school bus program, *id.*, § 16.52. See also *Pervis v. LaMarque Ind. School Dist.*, 328 F. Supp. 638, 642-643 (SD Tex. 1971), reversed, 466 F. 2d 1054 (CA5 1972); *Nichols v. Aldine Ind. School Dist.*, 356 S. W. 2d 182 (Tex. Civ. App. 1962). Local school boards also determine attendance zones, location of new schools, closing of old ones, school attendance hours (within limits), grading and promotion policies subject to general guidelines, recreational and athletic policies, and a myriad of other matters in the routine of school administration. It cannot be seriously doubted that in Texas education remains largely a local function, and that the preponderating bulk of all decisions affecting the schools are made and executed at the local level, guaranteeing the greatest participation by those most directly concerned.

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at the state level will go increased control over local policies.¹⁰⁹

Appellees further urge that the Texas system is unconstitutional arbitrary because it allows the availability of local taxable resources to turn on "happenstance." They see no justification for a system that allows, as they contend, the quality of education to fluctuate on the basis of the fortuitous positioning of the boundary lines of political subdivisions and the location of valuable commercial and industrial property. But any scheme of local taxation—indeed the very existence of identifiable local governmental units—requires the establishment of

¹⁰⁹ This theme—that greater state control over funding will lead to greater state power with respect to local educational programs and policies—is a recurrent one in the literature on financing public education. Professor Simon, in his thoughtful analysis of the political ramifications of this case, states that one of the most likely consequences of the District Court's decision would be an increase in the centralization of school finance and an increase in the extent of collective bargaining by teacher unions at the state level. He suggests that the subjects for bargaining may include many "non-salary" items, such as teaching loads, class size, curricular and program choices, questions of student discipline, and selection of administrative personnel—matters traditionally decided heretofore at the local level. Simon, *supra*, n. 62, at 434-436. See, e. g., Coleman, The Struggle for Control of Education, in *Education and Social Policy: Local Control of Education* 64, 77-79 (Bowers, Housego & Dyke ed. 1970); J. Conant, The Child, The Parent, and The State 27 (1959) ("Unless a local community, through its school board, has some control over the purse, there can be little real feeling in the community that schools are in fact local schools. . . ."); Howe, Anatomy of a Revolution, in *Sat. Rev.* 84, 88 (Nov. 20, 1971) ("It is an axiom of American politics that control and power follow money. . . ."); Hutchinson, State-Administered Locally-Shared Taxes 21 (1931) ("[S]tate administration of taxation is the first step toward state control of the functions supported by these taxes. . . ."). Irrespective of whether one regards such prospects as detrimental, or whether he agrees that the consequence is inevitable, it certainly cannot be doubted that there is a rational basis for this concern on the part of parents, educators, and legislators.

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jurisdictional boundaries that are inevitably arbitrary. It is equally inevitable that some localities are going to be blessed with more taxable assets than others.¹¹⁰ Nor is local wealth a static quantity. Changes in the level of taxable wealth within any district may result from any number of events, some of which local residents can and do influence. For instance, commercial and industrial enterprises may be encouraged to locate within a district by various actions—public and private.

Moreover, if local taxation for local expenditure is an unconstitutional method of providing for education then it may be an equally impermissible means of providing other necessary services customarily financed largely from local property taxes, including local police and fire protection, public health and hospitals, and public utility facilities of various kinds. We perceive no justification for such a severe denegation of local property taxation and control as would follow from appellees' contentions. It has simply never been within the constitutional prerogative of this Court to nullify statewide measures for financing public services merely because the burdens or benefits thereof fall unevenly depending upon the relative wealth of the political subdivisions in which citizens live.

In sum, to the extent that the Texas system of school finance results in unequal expenditures between children who happen to reside in different districts, we cannot say that such disparities are the product of a system that is so irrational as to be invidiously discriminatory. Texas has acknowledged its shortcomings and has per-

¹¹⁰ This Court has never doubted the propriety of maintaining political subdivisions within the States and has never found in the Equal Protection Clause any *per se* rule of "territorial uniformity." *McGowan v. Maryland*, 366 U. S. 420, 427 (1961). See also *Griffin v. County School Board of Prince Edward County*, 377 U. S. 218, 230-231 (1964); *Salsburg v. Maryland*, 346 U. S. 545 (1954). Cf. *Board of Education of Muskogee v. Oklahoma*, 409 F. 2d 665, 668 (CA10 1969).

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sistently endeavored—not without some success—to ameliorate the differences in levels of expenditures without sacrificing the benefits of local participation. The Texas plan is not the result of hurried, ill-conceived legislation. It certainly is not the product of purposeful discrimination against any group or class. On the contrary, it is rooted in decades of experience in Texas and elsewhere, and in major part is the product of responsible studies by qualified people. In giving substance to the presumption of validity to which the Texas system is entitled, *Lindsey v. National Carbonic Gas Co.*, 220 U. S. 61, 78 (1911), it is important to remember that at every stage of its development it has constituted a “rough accommodation” of interests in an effort to arrive at practical and workable solutions. *Metropolis Theatre Co. v. City of Chicago*, 228 U. S. 69–70 (1913). One also must remember that the system here challenged is not peculiar to Texas or to any other State. In its essential characteristics the Texas plan for financing public education reflects what many educators for a half century have thought was an enlightened approach to a problem for which there is no perfect solution. We are unwilling to assume for ourselves a level of wisdom superior to that of legislators, scholars, and educational authorities in 49 States, especially where the alternatives proposed are only recently conceived and nowhere yet tested. The constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest. *McGinnis v. Royster*, — U. S. —, — (1973). We hold that the Texas plan abundantly satisfies this standard.

IV

In light of the considerable attention that has focused on the District Court opinion in this case and on its California predecessor, *Serrano v. Priest*, 96 Cal. Rptr.

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601, 487 P. 2d 1241, 5 Cal. 3d 584 (1971), a cautionary postscript seems appropriate. It cannot be questioned that the constitutional judgment reached by the District Court and approved by our dissenting brothers today would occasion in Texas and elsewhere an unprecedented upheaval in public education. Some commentators have concluded that, whatever the contours of the alternative financing programs that might be devised and approved, the result could not avoid being a beneficial one. But, just as there is nothing simple about the constitutional issues involved in these cases, there is nothing simple or certain about predicting the consequences of massive change in the financing and control of public education. Those who have devoted the most thoughtful attention to the practical ramifications of these cases have found no clear or dependable answers and their scholarship reflects no such unqualified confidence in the desirability of completely uprooting the existing system.

The complexity of these problems is demonstrated by the lack of consensus with respect to whether it may be said with any assurance that the poor, the racial minorities, or the children in overburdened core-city school districts would be benefitted by abrogation of traditional modes of financing education. Unless there is to be a substantial increase in state expenditures on education across the board—an event the likelihood of which is open to considerable question¹¹¹—these groups stand to

¹¹¹ Any alternative that calls for significant increases in expenditures for education, whether financed through increases in property taxation or through other sources of tax dollars such as income and sales taxes, is certain to encounter political barriers. At a time when nearly every State and locality is suffering from fiscal undernourishment, and with demands for services of all kinds burgeoning and with weary taxpayers already resisting tax increases, there is considerable reason to question whether a decision of this Court nullifying present state taxing systems would result in a marked increase in the financial commitment to education. See Senate Select

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realize gains in terms of increased per pupil expenditures only if they reside in districts that presently spend at relatively low levels, *i. e.*, in those districts that would benefit from the redistribution of existing resources. Yet recent studies have indicated that the poorest families are not invariably clustered in the most impecunious school districts.¹¹² Nor does it now appear that there is any more than a random chance that racial minorities are concentrated in property-poor districts.¹¹³ Additionally, several research projects have concluded that any financing alternative designed to achieve a greater equality of

Comm. on Equal Educational Opportunity, 92d Cong., 2d Sess., *Toward Equal Educational Opportunity* 339-345 (Comm. Print 1972); Berke & Callahan, *Serrano v. Priest*: Milestone or Millstone for School Finance, 21 J. Pub. L. 23, 25-26 (1972); Simon, *supra*, n. 62, at 420-421. In Texas it has been calculated that \$2.4 billion of additional school funds would be required to bring all schools in that State up to the present level of expenditure of all but the wealthiest districts—an amount more than double that currently being spent on education. Texas Research League, *supra*, n. 20, at 16-18. An *amicus curiae* brief filed on behalf of almost 30 States, focusing on these practical consequences, claims with some justification that "each of the undersigned states . . . would suffer severe financial stringency." Brief of *Amici Curiae* in Support of Appellants, at 2 (filed by Atty. Gen. of Md. et al.).

¹¹² See Note, *supra*, n. 53. See also authorities cited n. 114, *infra*.

¹¹³ See Goldstein, *supra*, n. 38, at 526; C. Jencks, *supra*, n. 86, at 27; U. S. Comm'n on Civil Rights, *Inequality in School Financing: The Role of the Law* 37 (1972). J. Coons, W. Clune & S. Sugarman, *supra*, n. 13, at 356-357 n. 47, have noted that in California, for example, "59% of minority students live in districts above the median average valuation per pupil." In Bexar County by far the largest district—the San Antonio Independent School District—is above the local average in both the amount of taxable wealth per pupil and in median family income. Yet 72% of its students are Mexican-Americans. And, in 1967-1968 it spent only a very few dollars less per pupil than the North East and North Side Independent School Districts, which have only 7% and 18% Mexican-American enrollment respectively. Berke, Carnevale, Morgan & White, *supra*, n. 29, at 673.

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expenditures is likely to lead to higher taxation and lower educational expenditures in the major urban centers,¹¹⁴ a result that would exacerbate rather than ameliorate existing conditions in those areas.

These practical considerations, of course, play no role in the adjudication of the constitutional issues presented here. But they serve to highlight the wisdom of the traditional limitations on this Court's function. The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various States, and we do no violence to the values of federalism and separation of powers by staying our hand. We hardly need add that this Court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative new thinking as to public education, its methods and its funding, is necessary to assure both a higher level of quality and greater uniformity of opportunity. These matters merit the continued attention of the scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.

Reversed.

¹¹⁴ See Senate Select Comm. on Equal Educational Opportunity, 92d Cong., 2d Sess., *Issues in School Finance* 129 (Comm. Print 1972) (monograph entitled "Inequities in School Finance" prepared by Professors Berke and Callahan); U. S. Office of Education, *Finances of Large-City School Systems: A Comparative Analysis* (1972) (HEW publication); U. S. Comm'n on Civil Rights, *supra*, n. 113, at 33-36; Simon, *supra*, n. 62, at 410-411, 418.

SUPREME COURT OF THE UNITED STATES

No. 71-1332

San Antonio Independent School District et al., Appellants, v. Demetrio P. Rodriguez et al.	}	On Appeal from the United States Dis- trict Court for the Western District of Texas.
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[March 21, 1973]

MR. JUSTICE STEWART, concurring.

The method of financing public schools in Texas, as in almost every other State, has resulted in a system of public education that can fairly be described as chaotic and unjust.¹ It does not follow, however, and I cannot find, that this system violates the Constitution of the United States. I join the opinion and judgment of the Court because I am convinced that any other course would mark an extraordinary departure from principled adjudication under the Equal Protection Clause of the Fourteenth Amendment. The uncharted directions of such a departure are suggested, I think, by the imaginative dissenting opinion my Brother MARSHALL has filed today.

Unlike other provisions of the Constitution, the Equal Protection Clause confers no substantive rights and creates no substantive liberties.² The function of the Equal

¹ See New York Times, March 11, 1973, p. 1, col. 1.

² There is one notable exception to the above statement: It has been established in recent years that the Equal Protection Clause confers the substantive right to participate on an equal basis with other qualified voters whenever the State has adopted an electoral process for determining who will represent any segment of the State's population. See, e. g., *Reynolds v. Sims*, 377 U. S. 533; *Kramer v. Union School District*, 395 U. S. 621; *Dunn v. Blumstein*, 405 U. S.

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Protection Clause, rather, is simply to measure the validity of *classifications* created by state laws.

There is hardly a law on the books that does not affect some people differently from others. But the basic concern of the Equal Protection Clause is with state legislation whose purpose or effect is to create discrete and objectively identifiable classes.³ And with respect to such legislation, it has long been settled that the Equal Protection Clause is offended only by laws that are invidiously discriminatory—only by classifications that are wholly arbitrary or capricious. See, *e. g.*, *Rinaldi v. Yeager*, 384 U. S. 305. This settled principle of constitutional law was compendiously stated in Mr. Chief Justice Warren's opinion for the Court in *McGowan v. Maryland*, 366 U. S. 420, 425-426, in the following words:

"Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

330, 336. But there is no constitutional right to vote, as such. *Minor v. Happersett*, 88 U. S. 162. If there were such a right, both the Fifteenth Amendment and the Nineteenth Amendment would have been wholly unnecessary.

³ But see *Bullock v. Carter*, 405 U. S. 134.

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✓ This doctrine is no more than a specific application of one of the first principles of constitutional adjudication—the basic presumption of the constitutional validity of a duly enacted state or federal law. See Thayer, *The Origin and Scope of the American Doctrine of Constitutional Law*, 7 Harv. L. Rev. 129 (1893).

Under the Equal Protection Clause, this presumption of constitutional validity disappears when a State has enacted legislation whose purpose or effect is to create classes based upon criteria that, in a constitutional sense, are inherently “suspect.” Because of the historic purpose of the Fourteenth Amendment, the prime example of such a “suspect” classification is one that is based upon race. See, *e. g.*, *Brown v. Board of Education*, 347 U. S. 483; *McLaughlin v. Florida*, 379 U. S. 184. But there are other classifications that, at least in some settings, are also “suspect”—for example, those based upon national origin,⁴ alienage,⁵ indigency,⁶ or illegitimacy.⁷

Moreover, quite apart from the Equal Protection Clause, a state law that impinges upon a substantive right or liberty created or conferred by the Constitution is, of course, presumptively invalid, whether or not the law's purpose or effect is to create any classifications. For example, a law that provided that newspapers could be published only by people who had resided in the State for five years could be superficially viewed as invidiously discriminating against an identifiable class in violation of the Equal Protection Clause. But, more

⁴ See *Oyama v. California*, 332 U. S. 633, 644–646.

⁵ See *Graham v. Richardson*, 403 U. S. 365, 372.

⁶ See *Griffin v. Illinois*, 351 U. S. 12. “Indigency” means actual or functional indigency; it does not mean comparative poverty *vis-à-vis* comparative affluence. See *James v. Valtierra*, 402 U. S. 137.

⁷ See *Gomez v. Perez*, — U. S. —; *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164.

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basically, such a law would be invalid simply because it abridged the freedom of the press. Numerous cases in this Court illustrate this principle.⁸

In refusing to invalidate the Texas system of financing its public schools, the Court today applies with thoughtfulness and understanding the basic principles I have so sketchily summarized. First, as the Court points out, the Texas system has hardly created the kind of objectively identifiable classes that are cognizable under the Equal Protection Clause.⁹ Second, even assuming the existence of such discernible categories, the classifications are in no sense based upon constitutionally "suspect" criteria. Third, the Texas system does not rest "on grounds wholly irrelevant to the achievement of the State's objective." Finally, the Texas system impinges upon no substantive constitutional rights or liberties. It follows, therefore, under the established principle reaffirmed in Mr. Chief Justice Warren's opinion for the Court in *McGowan v. Maryland*, *supra*, that the judgment of the District Court must be reversed.

⁸ See, e. g., *Mosley v. Police Dept. of City of Chicago*, 408 U. S. 92 (free speech); *Shapiro v. Thompson*, 394 U. S. 618 (freedom of interstate travel); *Williams v. Rhodes*, 393 U. S. 23 (freedom of association); *Skinner v. Oklahoma*, 316 U. S. 535 ("liberty" conditionally protected by Due Process Clause of Fourteenth Amendment).

⁹ See *Katzenbach v. Morgan*, 384 U. S. 641, at 660 (Harlan, J., dissenting).

SUPREME COURT OF THE UNITED STATES

No. 71-1332

San Antonio Independent School District et al., Appellants,	} On Appeal from the United States District Court for the Western District of Texas.
v.	
Demetrio P. Rodriguez et al.	

[March 21, 1973]

MR. JUSTICE WHITE, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN join, dissenting.

The Texas public schools are financed through a combination of state funding, local property tax revenue, and some federal funds.¹ Concededly, the system yields wide disparity in per-pupil revenue among the various districts. In a typical year, for example, the Alamo Heights district had total revenues of \$594 per pupil, while the Edgewood district had only \$356 per student.² The majority and the State concede, as they must, the existence of major disparities in spendable funds. But the State contends that the disparities do not invidiously discriminate against children and families in districts such as Edgewood, because the Texas scheme is designed "to provide an adequate education for all, with local autonomy to go beyond that as individual school dis-

¹ The heart of the Texas system is embodied in an intricate series of statutory provisions which make up Chapter 16 of the Texas Education Code, V. T. C. A., Education Code § 16.01 *et seq.* See also V. T. C. A., Education Code § 15.01 *et seq.*, and § 20.10 *et seq.*

² The figures discussed are from Plaintiffs' Exhibits 7, 8, and 12. The figures are from the 1967-1968 school year. Because the various exhibits relied upon different attendance totals, the per pupil results do not precisely correspond to the gross figures quoted. The disparity between districts, rather than the actual figures, is the important factor.

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tricts desire and are able. . . . It leaves to the people of each district the choice whether to go beyond the minimum and, if so, by how much."³ The majority advances this rationalization: "While assuring a basic education for every child in the State, it permits and encourages a large measure of participation and control of each district's schools at the local level."

I cannot disagree with the proposition that local control and local decisionmaking play an important part in our democratic system of government. Cf. *James v. Valtierra*, 402 U. S. 137 (1971). Much may be left to local option, and this case would be quite different if it were true that the Texas system, while insuring minimum educational expenditures in every district through state funding, extends a meaningful option to all local districts to increase their per-pupil expenditures and so to improve their children's education to the extent that increased funding will achieve that goal. The system would then arguably provide a rational and sensible method of achieving the stated aim of preserving an area for local initiative and decision.

The difficulty with the Texas system, however, is that it provides a meaningful option to Alamo Heights and like school districts but almost none to Edgewood and those other districts with a low per-pupil real estate tax base. In these latter districts, no matter how desirous parents are of supporting their schools with greater revenues, it is impossible to do so through the use of the real estate property tax. In these districts the Texas system utterly fails to extend a realistic choice to parents, because the property tax, which is the only revenue-raising mechanism extended to school districts, is practically and legally unavailable. That this is the situation may be readily demonstrated.

³ Brief for Appellants, pp. 11-13, 35.

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Local school districts in Texas raise their portion of the Foundation School Program—the Local Fund Assignment—by levying ad valorem taxes on the property located within their boundaries. In addition, the districts are authorized, by the state constitution and by statute, to levy ad valorem property taxes in order to raise revenues to support educational spending over and above the expenditure of Foundation School Program funds.

Both the Edgewood and Alamo Heights districts are located in Bexar County, Texas. Student enrollment in Alamo Heights is 5,432, in Edgewood 22,862. The per-pupil market value of the taxable property in Alamo Heights is \$49,078, in Edgewood \$5,960. In a typical, relevant year, Alamo Heights had a maintenance tax rate of \$1.20 and a debt service (bond) tax rate of 20¢ per \$100 assessed evaluation, while Edgewood had a maintenance rate of 52¢ and a bond rate of 67¢. These rates, when applied to the respective tax bases, yielded Alamo Heights \$1,433,473 in maintenance dollars and \$236,074 in bond dollars, and Edgewood \$223,034 in maintenance dollars and \$279,023 in bond dollars. As is readily apparent, because of the variance in tax bases between the districts, results, in terms of revenues, do not correlate with effort, in terms of tax rate. Thus, Alamo Heights, with a tax base approximately twice the size of Edgewood's base, realized almost six times as many maintenance dollars as Edgewood by using a tax rate only approximately two and one-half times larger. Similarly, Alamo Heights realized slightly fewer bond dollars by using a bond tax rate less than one-third of that used by Edgewood.

Nor is Edgewood's revenue raising potential only deficient when compared with Alamo Heights. North East District has taxable property with a per-pupil market value of approximately \$31,000, but total taxable prop-

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erty approximately four and one-half times that of Edgewood. Applying a maintenance rate of \$1, North East yielded \$2,818,148. Thus, because of its superior tax base, North East was able to apply a tax rate slightly less than twice that applied by Edgewood and yield more than 10 times the maintenance dollars. Similarly, North East, with a bond rate of 45¢, yielded \$1,249,159—more than four times Edgewood's yield with two-thirds the rate.

Plainly, were Alamo Heights or North East to apply the Edgewood tax rate to its tax base, it would yield far greater revenues than Edgewood is able to yield applying those same rates to its base. Conversely, were Edgewood to apply the Alamo Heights or North East rates to its base, the yield would be far smaller than the Alamo Heights or North East yields. The disparity is, therefore, currently operative and its impact on Edgewood is undeniably serious. It is evident from statistics in the record that show that, applying an equalized tax rate of 85¢ per \$100 assessed valuation, Alamo Heights was able to provide approximately \$330 per pupil in local revenues over and above the Local Fund Assignment. In Edgewood, on the other hand, with an equalized tax rate of \$1.05 per \$100 of assessed valuation, \$26 per pupil was raised beyond the Local Fund Assignment.⁴ In Alamo Heights, total per-pupil revenues from local, state, and federal funds was \$594 per pupil, in Edgewood \$356.⁵

In order to equal the highest yield in any other Bexar County district, Alamo Heights would be required to tax

⁴ Variable assessment practices are also revealed in this record. Appellants do not, however, contend that this factor accounts, even to a small extent, for the interdistrict disparities.

⁵ The per pupil funds received from state, federal, and other sources, while not precisely equal, do not account for the large differential and are not directly attacked in the present case.

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at the rate of 68¢ per \$100 of assessed valuation. Edgewood would be required to tax at the prohibitive rate of \$5.76 per \$100. But state law places a \$1.50 per \$100 ceiling on the maintenance tax rate, a limit that would surely be reached long before Edgewood attained an equal yield. Edgewood is thus precluded in law, as well as in fact, from achieving a yield even close to that of some other districts.

The Equal Protection Clause permits discriminations between classes but requires that the classification bear some rational relationship to a permissible object sought to be attained by the statute. It is not enough that the Texas system before us seeks to achieve the valid, rational purpose of maximizing local initiative; the means chosen by the State must also be rationally related to the end sought to be achieved. As the Court stated just last Term in *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164, 172 (1972):

“The tests to determine the validity of state statutes under the Equal Protection Clause have been variously expressed, but this Court requires, at a minimum, that a statutory classification bear some rational relationship to a legitimate state purpose. *Morey v. Doud*, 354 U. S. 457 (1957); *Williamson v. Lee Optical Co.*, 348 U. S. 483 (1955); *Gulf, Colorado & Santa Fé R. Co. v. Ellis*, 165 U. S. 150 (1897); *Yick Wo v. Hopkins*, 118 U. S. 356 (1886).”

Neither Texas nor the majority heeds this rule. If the State aims at maximizing local initiative and local choice, by permitting school districts to resort to the real property tax if they choose to do so, it utterly fails in achieving its purpose in districts with property tax bases so low that there is little if any opportunity for interested parents, rich or poor, to augment school district revenues. Requiring the State to establish only that unequal treat-

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ment is in furtherance of a permissible goal, without also requiring the State to show that the means chosen to effectuate that goal are rationally related to its achievement, makes equal protection analysis no more than an empty gesture.⁶ In my view, the parents and children in Edgewood, and in like districts, suffer from an invidious discrimination violative of the Equal Protection Clause.

This does not, of course, mean that local control may not be a legitimate goal of a school financing system. Nor does it mean that the State must guarantee each district an equal per-pupil revenue from the state school financing system. Nor does it mean, as the majority appears to believe, that, by affirming the decision below, this Court would be "interposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever changing conditions." On the contrary, it would merely mean that the State must fashion a financing scheme which provides a rational

⁶ The State of Texas appears to concede that the choice of whether or not to go beyond the state-provided minimum "is easier for some districts than for others. Those districts with large amounts of taxable property can produce more revenue at a lower tax rate and will provide their children with more expensive education." Brief for Appellants, p. 35. The State nevertheless insists that districts have a choice and that the people in each district have exercised that choice by providing some real property tax money over and above the minimum funds guaranteed by the State. Like the majority, however, the State fails to explain why the Equal Protection Clause is not violated or how its goal of providing local government with realistic choices as to how much money should be expended on education is implemented where the system makes it much more difficult for some than for others to provide additional educational funds and where as a practical and legal matter it is impossible for some districts to provide the educational budgets that other districts can make available from real property tax revenues.

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basis for the maximization of local control, if local control is to remain a goal of the system, and not a scheme with "different treatment be[ing] accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute." *Reed v. Reed*, 404 U. S. 71, 75-76 (1971):

Perhaps the majority believes that the major disparity in revenues provided and permitted by the Texas system is inconsequential. I cannot agree, however, that the difference of the magnitude appearing in this case can sensibly be ignored, particularly since the State itself considers it so important to provide opportunities to exceed the minimum state educational expenditures.

There is no difficulty in identifying the class that is subject to the alleged discrimination and that is entitled to the benefits of the Equal Protection Clause. I need go no farther than the parents and children in the Edgewood district, who are plaintiffs here and who assert that they are entitled to the same choice as Alamo Heights to augment local expenditures for schools but are denied that choice by state law. This group constitutes a class sufficiently definite to invoke the protection of the Constitution. They are as entitled to the protection of the Equal Protection Clause as were the voters in allegedly unrepresented counties in the reapportionment cases. See, e. g., *Baker v. Carr*, 369 U. S. 186, 204-208 (1962); *Gray v. Sanders*, 372 U. S. 368, 375 (1963); *Reynolds v. Sims*, 377 U. S. 533, 554-556 (1964). And in *Bullock v. Carter*, 405 U. S. 134 (1972), where a challenge to the Texas candidate filing fee on equal protection grounds was upheld, we noted that the victims of alleged discrimination wrought by the filing fee "cannot be described by reference to discrete and precisely defined segments of the community as is typical of inequities challenged under the Equal Protection Clause," but concluded that "we would ignore reality were we not to recognize that:

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this system falls with unequal weight on voters, as well as candidates, according to economic status." *Id.*, at 144. Similarly, in the present case we would blink reality to ignore the fact that school districts, and students in the end, are differentially affected by the Texas school financing scheme with respect to their capability to supplement the Minimum Foundation School Program. At the very least, the law discriminates against those children and their parents who live in districts where the per-pupil tax base is sufficiently low to make impossible the provision of comparable school revenues by resort to the real property tax which is the only device the State extends for this purpose.

SUPREME COURT OF THE UNITED STATES

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[March 21, 1973]

MR. JUSTICE BRENNAN, dissenting.

Although I agree with my Brother WHITE that the Texas statutory scheme is devoid of any rational basis, and for that reason is violative of the Equal Protection Clause, I also record my disagreement with the Court's rather distressing assertion that a right may be deemed "fundamental" for the purposes of equal protection analysis only if it is "explicitly or implicitly guaranteed by the Constitution." *Ante*, at —. As my Brother MARSHALL convincingly demonstrates, our prior cases stand for the proposition that "fundamentality" is, in large measure, a function of the right's importance in terms of the effectuation of those rights which are in fact constitutionally guaranteed. Thus, "[a]s the nexus between the specific constitutional guarantee and the non-constitutional interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly." *Post*, at —.

Here, there can be no doubt that education is inextricably linked to the right to participate in the electoral process and to the rights of free speech and association guaranteed by the First Amendment. See *post*, at —. This being so, any classification affecting education must

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be subjected to strict judicial scrutiny, and since even the State concedes that the statutory scheme now before us cannot pass constitutional muster under this stricter standard of review, I can only conclude that the Texas school financing scheme is constitutionally invalid.

SUPREME COURT OF THE UNITED STATES

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[March 21, 1973]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS concurs, dissenting.

The Court today decides, in effect, that a State may constitutionally vary the quality of education which it offers its children in accordance with the amount of taxable wealth located in the school districts within which they reside. The majority's decision represents an abrupt departure from the mainstream of recent state and federal court decisions concerning the unconstitutionality of state educational financing schemes dependent upon taxable local wealth.¹ More unfortunately, though, the majority's holding can only be seen as a retreat from our historic commitment to equality of educational opportunity and as unsupportable acquiescence in a system which deprives children in their earliest years of the chance to reach their full potential as citizens. The Court does this despite the absence of any substantial justification for a scheme which arbitrarily channels edu-

¹ See *Van Dusartz v. Hatfield*, 334 F. Supp. 870 (Minn. 1971), *Milliken v. Green*, — Mich. —, — N. W. 2d — (1972); *Serrano v. Priest*, 5 Cal. 3d 584, 487 P. 2d 1241, 96 Cal. Rptr. 601 (1971); *Robinson v. Cahill*, 118 N. J. Super. 223, 287 A. 2d 187, 119 N. J. Super. 40, 289 A. 2d 569 (1972); *Hollins v. Shofstall*, Civil No. C-253652 (Super. Ct. Maricopa Cty., Ariz., July 7, 1972). See also *Sweetwater County Planning Comm. for the Organization of School Districts v. Hinkle*, 491 P. 2d 1234 (Wyo. 1971), *juris. relinquished*, 493 P. 2d 1050 (Wyo. 1972).

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cational resources in accordance with the fortuity of the amount of taxable wealth within each district.

In my judgment, the right of every American to an equal start in life, so far as the provision of a state service as important as education is concerned, is far too vital to permit state discrimination on grounds as tenuous as those presented by this record. Nor can I accept the notion that it is sufficient to remit these appellees to the vagaries of the political process which, contrary to the majority's suggestion, has proven singularly unsuited to the task of providing a remedy for this discrimination.² I, for one, am unsatisfied with the hope of an ultimate "political" solution sometime in the indefinite future while, in the meantime, countless children unjustifiably receive inferior educations that "may affect their hearts and minds in a way unlikely ever to be undone." *Brown v. Board of Education*, 347 U. S. 483, 494 (1954). I must therefore respectfully dissent.

I

The Court acknowledges that "substantial interdistrict disparities in school expenditures" exist in Texas, *ante*, at —, and that these disparities are "largely attributable to differences in the amounts of money collected through local property taxation," *ante*, at —. But instead of closely examining the seriousness of these

²The District Court in this case postponed decisions for some two years in the hope that the Texas Legislature would remedy the gross disparities in treatment inherent in the Texas financing scheme. It was only after the legislature failed to act in its 1971 Regular Session that the District Court, apparently recognizing the lack of hope for self-initiated legislative reform, rendered its decision. See Texas Research League, Public School Finance Problems in Texas 13 (Interim Report 1972). The strong vested interest of property rich districts in the existing property tax scheme poses a substantial barrier to self-initiated legislative reform in educational financing. See N. Y. Times, Dec. 19, 1972, at 1, col. 1

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disparities and the invidiousness of the Texas financing scheme, the Court undertakes an elaborate exploration of the efforts Texas has purportedly made to close the gaps between its districts in terms of levels of district wealth and resulting educational funding. Yet, however praiseworthy Texas' equalizing efforts, the issue in this case is not whether Texas is doing its best to ameliorate the worst features of a discriminatory scheme, but rather whether the scheme itself is in fact unconstitutionally discriminatory in the face of the Fourteenth Amendment's guarantee of equal protection of the laws. When the Texas financing scheme is taken as a whole, I do not think it can be doubted that it produces a discriminatory impact on substantial numbers of the school-age children of the State of Texas.

A

Funds to support public education in Texas are derived from three sources: local ad valorem property taxes; the Federal Government; and the state government.³ It is enlightening to consider these in order.

Under Texas law the only mechanism provided the local school district for raising new, unencumbered revenues is the power to tax property located within its

³ Texas provides its school districts with extensive bonding authority to obtain capital both for the acquisition of school sites and "the construction and equipment of school buildings," Tex. Educ. Code Ann. § 20.01, and for the acquisition, construction, and maintenance of "gymnasias, stadia, and other recreational facilities," *id.*, §§ 20.21-20.22. While such private capital provides a fourth source of revenue, it is, of course, only temporary in nature since the principal and interest of all bonds must ultimately be paid out of the receipts of the local ad valorem property tax, see *id.*, §§ 20.01, 20.04, except to the extent that outside revenues derived from the operation of certain facilities, such as gymnasium, are employed to repay the bonds issued thereon, see *id.*, §§ 20.22, 20.25.

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boundaries.⁴ At the same time, the Texas financing scheme effectively restricts the use of monies raised by local property taxation to the support of public education within the boundaries of the district in which they are raised, since any such taxes must be approved by a majority of the property-taxpaying voters of the district.⁵

The significance of the local property tax element of the Texas financing scheme is apparent from the fact that it provides the funds to meet some 40% of the cost of public education for Texas as a whole.⁶ Yet the amount of revenue that any particular Texas district can raise is dependent on two factors—its tax rate and its amount of taxable property. The first factor is determined by the property-taxpaying voters of the district.⁷ But regardless of the enthusiasm of the local voters for public education, the second factor—the taxable property wealth of the district—necessarily restricts the district's ability to raise funds to support public education.⁸ Thus, even

⁴ See Tex. Const., Art. 7, § 3; Tex. Educ. Code Ann. § 20.01-02. As a part of the property tax scheme, bonding authority is conferred upon the local school districts, see n. 3, *supra*.

⁵ See Tex. Educ. Code Ann. § 20.04.

⁶ For the 1970-1971 school year, the precise figure was 41.1%. See Texas Research League, *supra*, n. 2, at 9.

⁷ See Tex. Educ. Code Ann. § 20.04.

Theoretically, Texas law limits the tax rate for public school maintenance, see *id.*, § 20.02, to \$1.50 per \$100 valuation, see *id.*, § 20.04 (d). However, it does not appear that any Texas district presently taxes itself at the highest rate allowable, although some poor districts are approaching it, see App., at 174.

⁸ Under Texas law local districts are allowed to employ differing bases of assessment—a fact that introduces a third variable into the local funding. See Tex. Educ. Code Ann. § 20.03. But neither party has suggested that this factor is responsible for the disparities in revenues available to the various districts. Consequently, I believe we must deal with this case on the assumption that differences in local methods of assessment do not meaningfully affect the revenue

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though the voters of two Texas districts may be willing to make the same tax effort, the results for the districts will be substantially different if one is property rich while the other is property poor. The necessary effect of the Texas local property tax is, in short, to favor property rich districts and to disfavor property poor ones.

The seriously disparate consequences of the Texas local property tax, when that tax is considered alone, are amply illustrated by data presented to the District Court by appellees. These data included a detailed study of a sample of 110 Texas school districts⁹ for the 1967-1968 school year conducted by Professor Joel S. Berke of Syracuse University's Educational Finance Policy Institute. Among other things, this study revealed that the 10 richest districts examined, each of which had more than \$100,000 in taxable property per pupil, raised through local effort an average of \$610 per pupil, whereas the four poorest districts studied, each of which had less than \$10,000 in taxable property per pupil, were able to raise only an average of \$63 per pupil.¹⁰ And, as the Court effectively recognizes, *ante*, at —, this correlation between the amount of taxable property per pupil and the amount of local revenues per pupil holds true for the 96 districts in between the richest and poorest districts.¹¹

raising power of local districts relative to one another. The Court apparently admits as much. See *ante*, at —. It should be noted, moreover, that the main set of data introduced before the District Court to establish the disparities at issue here was based upon "equalized taxable property" values which had been adjusted to correct for differing methods of assessment. See App. C to Affidavit of Professor Joel S. Berke.

⁹ Texas has approximately 1,200 school districts.

¹⁰ See App. I, *infra*.

¹¹ See *id.* Indeed, appellants acknowledge that the relevant data from Professor Berke's affidavit show "a very positive correlation, 0.973, between market value of taxable property per pupil and

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It is clear, moreover, that the disparity of per pupil revenues cannot be dismissed as the result of lack of local effort—that is, lower tax rates—by property poor districts. To the contrary, the data presented below indicate that the poorest districts tend to have the highest tax rates and the richest districts tend to have the lowest tax rates.¹² Yet, despite the apparent *extra* effort being made by the poorest districts, they are unable even to begin to match the richest districts in terms of the production of local revenues. For example, the 10 richest districts studied by Professor Berke were able to produce \$585 per pupil with an equalized tax rate of 31¢ on \$100 of equalized valuation, but the four poorest districts studied, with an equalized rate of 70¢ on \$100 of equalized valuation, were able to produce only \$60 per pupil.¹³ Without more, this state imposed system of educational funding presents a serious picture of widely varying treatment of Texas school districts, and thereby

state and local revenues per pupil.” Reply Brief for Appellants 6, n. 9.

While the Court takes issue with much of Professor Berke’s data and conclusions, *ante*, at —, nn. 38 and —, I do not understand its criticisms to run to the basic finding of a correlation between taxable district property per pupil and local revenues per pupil. The critique of Professor Berke’s methodology upon which the Court relies, see Goldstein, *Interdistrict Inequalities in School Financing: A Critical Analysis of Serrano v. Priest*, and its Progeny, 120 U. Pa. L. Rev. 504, 523–525, nn. 67 and 71 (1972), is directed only at the suggested correlations between family income and taxable district wealth, and between race and taxable district wealth. Obviously, the appellants do not question the relationship in Texas between taxable district wealth and per pupil expenditures; and there is no basis for the Court to do so, whatever the criticisms that may be leveled at other aspects of Professor Berke’s study, see *infra*, n. 55.

¹² See App. II, *infra*.

¹³ See *Ibid*.

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of Texas school children, in terms of the amount of funds available for public education.

Nor are these funding variations corrected by the other aspects of the Texas financing scheme. The Federal Government provides funds sufficient to cover only some 10% of the total cost of public education in Texas.¹⁴ Furthermore, while these federal funds are not distributed in Texas solely on a per pupil basis, appellants do not here contend that they are used in such a way as to ameliorate significantly the widely varying consequences for Texas school districts and school children of the local property tax element of the state financing scheme.¹⁵

State funds provide the remaining some 50% of the monies spent on public education in Texas.¹⁶ Technically, they are distributed under two programs. The first is the Available School Fund, for which provision is made in the Texas Constitution.¹⁷ The Available School Fund is comprised of revenues obtained from a number of sources, including receipts from the state ad valorem property tax, one-fourth of all monies collected by the occupation taxes, annual contributions by the legislature from general revenues, and the revenues de-

¹⁴ For the 1970-1971 school year, the precise figure was 10.9%. See Texas Research League, *supra*, n. 2, at 9.

¹⁵ Appellants made such a contention before the District Court but apparently have abandoned it in this Court. Indeed, data introduced in the District Court simply belies the argument that federal funds have a significant equalizing effect. See App. I, *infra*. And, as the District Court observed, it does not follow that remedial action by the Federal Government would excuse any unconstitutional discrimination effected by the state financing scheme 337 F. Supp. 280, 284.

¹⁶ For the 1970-1971 school year, the precise figure was 48%. See Texas Research League, *supra*, n. 2, at 9.

¹⁷ See Tex. Const., Art. 7, § 5 (Supp. 1972). See also Tex. Educ. Code Ann. § 15.01 (b).

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rived from the Permanent School Fund.¹⁸ For the 1970-1971 school year the Available School Fund contained \$296,000,000. The Texas Constitution requires that this money be distributed annually on a per capita basis¹⁹ to the local school districts. Obviously such a flat grant could not alone eradicate the funding differentials attributable to the local property tax. Moreover, today the Available School Fund is in reality simply one facet of the second state financing program, the Minimum Foundation School Program,²⁰ since each district's annual share of the Fund is deducted from the sum to which the district is entitled under the Foundation Program.²¹

The Minimum Foundation School Program provides funds for three specific purposes: professional salaries, current operating expenses, and transportation expenses.²² The State pays, on an overall basis, for approximately 80% of the cost of the Program; the remaining 20% is distributed among the local school districts under the Local Fund Assignment.²³ Each district's share of the Local Fund Assignment is determined by a complex "economic index" which is designed to allocate a larger share of the costs to property rich districts than to prop-

¹⁸ See Tex. Educ. Code Ann. § 15.01 (b).

The Permanent School Fund is, in essence, a public trust initially endowed with vast quantities of public land, the sale of which has provided an enormous copus that in turn produces substantial annual revenues which are devoted exclusively to public education. See Tex. Const., Art. 7, § 5 (Supp. 1972). See also V Report of the Governor's Committee on Public School Education, *The Challenge and the Chance* 11 (1969) (hereinafter Texas Governor's Committee Report).

¹⁹ This is determined from the average daily attendance within each district for the preceding year. Tex. Educ. Code Ann. § 15.01 (c).

²⁰ See *id.*, §§ 16.01-16.975.

²¹ See *id.*, §§ 16.71 (2), 16.79.

²² See *id.*, §§ 16.301-16.316, 16.45, 16.51-16.63.

²³ See *id.*, §§ 16.72-16.73, 16.76-16.77.

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erty poor districts.²⁴ Each district pays its share with revenues derived from local property taxation.

The stated purpose of the Minimum Foundation School Program is to provide certain basic funding for each local Texas school district.²⁵ At the same time, the Program was apparently intended to improve, to some degree, the financial position of property poor districts relative to property rich districts, since—through the use of the economic index—an effort is made to charge a disproportionate share of the costs of the Program to rich districts.²⁶ It bears noting, however, that substantial criticism has been leveled at the practical effectiveness of the economic index system of local cost allocation.²⁷ In theory, the index is designed to ascertain the relative ability of each district to contribute to the Local Fund Assignment from local property taxes. Yet the index is not developed simply on the basis of each district's taxable wealth. It also takes into account the district's relative income from manufacturing, mining, and agriculture, its payrolls, and its scholastic population.²⁸ It is difficult to discern precisely how these latter factors are predictive of a district's relative ability to raise

²⁴ See *id.*, §§ 16.74–16.76. The formula for calculating each district's share is described in V Texas Governor's Committee Report 44–48.

²⁵ See Tex. Educ. Code Ann. § 16.01.

²⁶ See V Texas Governor's Committee Report 40–41.

²⁷ See *id.*, at 45–67; Texas Research League, Texas Public Schools Under the Minimum Foundation Program—An Evaluation: 1949–1954, 67–68 (1954).

²⁸ Technically, the economic index involves a two step calculation. First, on the basis of the factors mentioned above, each Texas county's share of the Local Fund Assignment is determined. Then each county's share is divided among its school districts on the basis of their relative shares of the county's assessable wealth. See Tex. Educ. Code Ann. §§ 16.74–16.76; V Texas Governor's Committee Report 43–44; Texas Research League, Texas Public School Finance: A Majority of Exceptions 6–8 (2d Interim Report 1972).

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revenues through local property taxes. Thus, in 1966; one of the consultants who originally participated in the development of the Texas economic index adopted in 1949 told the Governor's Committee on Public Education:²⁹ "The Economic Index approach to evaluating local ability offers a little better measure than sheer chance but not much."

Moreover, even putting aside these criticisms of the economic index as a device for achieving meaningful district wealth equalization through cost allocation, poor districts still do not necessarily *receive* more state aid than property rich districts. For the standards which currently determine the amount received from the Foundation Program by any particular district³⁰ favor property rich districts.³¹ Thus, focusing on the same Edge-

²⁹ V Texas Governor's Committee Report 48, quoting statement of Dr. Edgar Morphet.

³⁰ The extraordinarily complex standards are summarized in V Texas Governor's Committee Report 41-43.

³¹ The key element of the Minimum Foundation School Program is the provision of funds for professional salaries—more particularly, for teacher salaries. The Program provides each district with funds to pay its professional payroll as determined by certain state standards. See Tex. Educ. Code Ann. §§ 16.301-16.316. If the district fails to pay its teachers at the levels determined by the state standards it receives nothing from the Program. See *id.*, § 16.301 (c). At the same time, districts are free to pay their teachers salaries in excess of the level set by the state standards, using local revenues—that is, property tax revenue—to make up the difference, see *id.*, § 16.301 (a).

The state salary standards focus upon two factors: the educational level and the experience of the district's teachers. See *id.*, §§ 16.301-16.316. The higher these two factors are, the more funds the district will receive from the Foundation Program for professional salaries.

It should be apparent that the net effect of this scheme is to provide more assistance to property rich districts than to property poor ones. For rich districts are able to pay their teachers, out of

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wood Independent and Alamo Heights School Districts which the majority uses for purposes of illustration, we find that in 1967-1968 property rich Alamo Heights,³² which raised \$333 per pupil on an equalized tax rate of 85¢ per \$100 valuation, received \$225 per pupil from the Foundation Program, while property poor Edgewood,³³ which raised only \$26 per pupil with an equalized tax rate of \$1.05 per \$100 valuation, received only \$222 per pupil from the Foundation Program.³⁴ And, more recent data, which indicates that for the 1970-1971 school year Alamo Heights received \$491 per pupil from the Program

local funds, salary increments above the state minimum levels. Thus, the rich districts are able to attract the teachers with the best education and the most experience. To complete the circle, this then means, given the state standards, that the rich districts receive more from the Foundation Program for professional salaries than do poor districts. A portion of Professor Berke's study vividly illustrates the impact of the State's standards on districts of varying wealth. See App. III, *infra*.

³² In 1967-1968, Alamo Heights School District had \$49,478 in taxable property per pupil. See Berke Affidavit, Table VII, App., at 216.

³³ In 1967-1968, Edgewood Independent School District had \$5,960 in taxable property per pupil. *Ibid*.

³⁴ I fail to understand the relevance for this case of the Court's suggestion that if Alamo Heights School District, which is approximately the same physical size as Edgewood Independent School District but which has only one-fourth as many students, had the same number of students as Edgewood, the former's per pupil expenditure would be considerably closer to the latter's. *Ante*, at —, n. 33. Obviously, this is true, but it does not alter the simple fact that Edgewood *does* have four times as many students but not four times as much taxable property wealth. From the perspective of Edgewood's school children then—the perspective that ultimately counts here—Edgewood is clearly a much poorer district than Alamo Heights. The question here is not whether districts have equal taxable property wealth in absolute terms, but whether districts have differing taxable wealth given their respective school-age populations.

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while Edgewood received only \$356 per pupil, hardly suggests that the wealth gap between the districts is being narrowed by the State Program. To the contrary, whereas in 1967-1968 Alamo Heights received only \$3 per pupil or about 1%, more than Edgewood in state aid, by 1970-1971 the gap had widened to a difference of \$135 per pupil, or about 38%.³⁵ It was data of this character that prompted the District Court to observe that "the current [state aid] system tends to subsidize the rich at the expense of the poor, rather than the other way around."³⁶ 337 F. Supp. 280, 282. And even the appellants go no further here than to venture that the Minimum Foundation School Program has "a mildly equalizing effect."³⁷

Despite these facts, the majority continually emphasizes how much state aid has, in recent years, been given to property poor Texas school districts. What the Court fails to emphasize is the cruel irony of how much more state aid is being given to property rich Texas school

³⁵ In the face of these gross disparities in treatment which experience with the Texas financing scheme has revealed, I cannot accept the Court's suggestion that we are dealing here with a remedial scheme to which we should accord substantial deference because of its accomplishments rather than criticize it for its failures. *Ante*, at —. Moreover, Texas' financing scheme is hardly remedial legislation of the type for which we have previously shown substantial tolerance. Such legislation may in fact extend the vote to "persons who otherwise would be denied it by state law," *Katzenbach v. Morgan*, 384 U. S. 641, 657 (1966), or it may eliminate the evils of the private bail bondsman, *Schilb v. Kuebel*, 404 U. S. 357 (1971). But those are instances in which a legislative body has sought to remedy problems for which it cannot be said to have been directly responsible. By contrast, public education is the function of the State in Texas, and the responsibility for any defect in the financing scheme must ultimately rest with the State. It is the State's own scheme which has caused the funding problem, and, thus viewed, that scheme can hardly be deemed remedial.

³⁶ Compare App. I, *infra*

³⁷ Brief for Appellants 3.

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districts on top of their already substantial local property tax revenues.³⁸ Under any view, then, it is apparent that the state aid provided by the Foundation School Program fails to compensate for the large funding variations attributable to the local property tax element of the Texas financing scheme. And it is these stark differences in the treatment of Texas school districts and school children inherent in the Texas financing scheme, not the absolute amount of state aid provided to any particular school district, that are the crux of this case. There can, moreover, be no escaping the conclusion that the local property tax which is dependent upon taxable district property wealth is an essential feature of the Texas scheme for financing public education.³⁹

B

The appellants do not deny the disparities in educational funding caused by variations in taxable district property wealth. They do contend, however, that whatever the differences in per pupil spending among Texas districts, there are no discriminatory consequences for the children of the disadvantaged districts. They recognize that what is at stake in this case is the quality of the public education provided Texas children in the districts in which they live. But appellants reject the suggestion that the quality of education in any particular district

³⁸ Thus, in 1967-1968, Edgewood had a total of \$248 per pupil in state and local funds compared with a total of \$558 per pupil for Alamo Heights. See Berke Affidavit, Table X, App., at 219. For 1970-1971, the respective totals were \$418 and \$913. See Texas Research League, *supra*, n. 2, at 14.

³⁹ Not only does the local property tax provide approximately 40% of the funds expended on public education, but it is the *only* source of funds for such essential aspects of educational financing as the payment of school bonds, see n. 3, *supra*, and the payment of the district's share of the Local Fund Assignment, as well as for nearly all expenditures above the minimums established by the Foundation Program.

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is determined by money—beyond some minimal level of funding which they believe to be assured every Texas district by the Minimum Foundation School Program. In their view, there is simply no denial of equal educational opportunity to any Texas school children as a result of the widely varying per pupil spending power provided districts under the current financing scheme.

In my view, though, even an unadorned restatement of this contention is sufficient to reveal its absurdity. Authorities concerned with educational quality no doubt disagree as to the significance of variations in per pupil spending.⁴⁰ Indeed, conflicting expert testimony was presented to the District Court in this case concerning the effect of spending variations on educational achievement.⁴¹ We sit, however, not to resolve disputes over educational theory—but to enforce our Constitution. It is an inescapable fact that if one district has more funds available per pupil than another district, the former will have greater choice in educational planning than will the latter. In this regard, I believe

⁴⁰ Compare, *e. g.*, J. Coleman, et al., Equality of Educational Opportunity 290-330 (1966), Jencks, The Coleman Report and the Conventional Wisdom, in *On Equality of Educational Opportunity* 69, 91-104 (F. Mosteller & D. Moynihan, ed. 1972), with *e. g.*, J. Guthrie, G. Kleindorfer, H. Levin, & R. Stout, Schools and Inequality 79-90 (1971); Kiesling, Measuring a Local Government Service: A Study of School Districts in New York State, 49 Rev. Econ. & Statistics 356 (1967).

⁴¹ Compare Berke Deposition, at 10 ("[D]ollar expenditures are probably the best way of measuring the quality of education afforded students . . ."), with Graham Deposition, at 3 ("[I]t is not just necessarily the money, no. It is how wisely you spend it."). It warrants noting that even appellants' witness, Mr. Graham, qualified the importance of money only by the requirement of wise expenditure. Quite obviously, a district which is property poor is powerless to match the education provided by a property rich district assuming each district allocates its funds with equal wisdom,

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the question of discrimination in educational quality must be deemed to be an objective one that looks to what the State provides its children, not to what the children are able to do with what they receive. That a child forced to attend an underfunded school with poorer physical facilities, less experienced teachers, larger classes, and a narrower range of courses than a school with substantially more funds—and thus with greater choice in educational planning—may nevertheless excel is to the credit of the child, not the State, cf. *Missouri ex rel. Ganes v. Canada*, 305 U. S. 337, 349 (1933). Indeed, who can ever measure for such a child the opportunities lost and the talents wasted for want of a broader, more enriched education? Discrimination in the opportunity to learn that is afforded a child must be our standard.

Hence, even before this Court recognized its duty to tear down the barriers of state enforced racial segregation in public education, it acknowledged that inequality in the educational facilities provided to students may make for discriminatory state action as contemplated by the Equal Protection Clause. As a basis for striking down state enforced segregation of a law school, the Court in *Sweatt v. Painter*, 339 U. S. 629, 633-634 (1950), stated:

"[W]e cannot find substantial equality in the educational opportunities offered white and Negro law students by the State. In terms of number of faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, the [white only] Law School is superior. . . . It is difficult to believe that one who had a free choice between these law schools would consider the question close."

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See also *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U. S. 637 (1950). Likewise it is difficult to believe that if the children of Texas had a free choice, they would choose to be educated in districts with fewer resources, and hence with more antiquated plants, less experienced teachers, and a less diversified curriculum. In fact, if financing variations are so insignificant to educational quality, it is difficult to understand why a number of our country's wealthiest school districts, who have no legal obligation to argue in support of the constitutionality of the Texas legislation, have nevertheless zealously pursued its cause before this Court.⁴²

The consequences, in terms of objective educational inputs, of the variations in district funding caused by the Texas financing scheme are apparent from the data introduced before the District Court. For example, in 1968-1969, 100% of the teachers in the property rich Alamo Heights School District had college degrees.⁴³ By contrast, during the same school year only 80.02% of the teachers had college degrees in the property poor Edgewood Independent School District.⁴⁴ Also, in 1968-1969, approximately 47% of the teachers in the Edgewood District were on emergency teaching permits, whereas only 11% of the teachers in Alamo Heights were on such permits.⁴⁵ This is undoubtedly a reflection of the

⁴² See Brief of, *inter alia*, San Marino Unified School District; Beverly Hills Unified School District as *amici curiae*; Brief of, *inter alia*, Bloomfield Hills, Michigan, School District; Dearborn City, Michigan, School District; Grosse Pointe, Michigan, Public School System as *amici curiae*.

⁴³ Answers to Plaintiffs' Interrogatories, App., at 115.

⁴⁴ *Ibid.* Moreover, during the same period, 37.17% of the teachers in Alamo Heights had advanced degrees, while only 14.98% of Edgewood's faculty had such degrees. See *id.*, at 116.

⁴⁵ *Id.*, at 117.

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fact that Edgewood's teacher salary scale was approximately 80% of Alamo Heights'.⁴⁶ And, not surprisingly, the teacher-student ratio varies significantly between the two districts.⁴⁷ In other words, as might be expected, a difference in the funds available to districts results in a difference in educational inputs available for a child's public education in Texas. For constitutional purposes, I believe this situation, which is directly attributable to the Texas financing scheme, raises a grave question of state created discrimination in the provision of public education. Cf. *Gaston County v. United States*, 395 U. S. 285, 293-294 (1969).

At the very least, in view of the substantial inter-district disparities in funding and in resulting educational inputs shown by appellees to exist under the Texas financing scheme, the burden of proving that these disparities do not in fact affect the quality of children's education must fall upon the appellants. Cf. *Hobson v. Hansen*, 327 F. Supp. 844, 860-861 (DC 1971). Yet appellants made no effort in the District Court to demonstrate that educational quality is not affected by variations in funding and in resulting inputs. And, in this Court, they have argued no more than that the relationship is ambiguous. This is hardly sufficient to overcome appellees' prima facie showing of state created discrimination between the school children of Texas with respect to objective educational opportunity.

Nor can I accept the appellants' apparent suggestion that the Texas Minimum Foundation School Program

⁴⁶ *Id.*, at 118.

⁴⁷ In the 1967-1968 school year, Edgewood had 22,862 students and 864 teachers, a ratio of 26.5 to 1. See *id.*, at 110, 114. In Alamo Heights, for the same school year, there were 5,432 students and 265 teachers for a ratio of 20.5 to 1. See *ibid.*

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effectively eradicates any discriminatory effects otherwise resulting from the local property tax element of the Texas financing scheme. Appellants assert that, despite its imperfections, the Program "does guarantee an adequate education to every child."⁴⁸ The majority, in considering the constitutionality of the Texas financing scheme, seems to find substantial merit in this contention, for it tells us that the Foundation Program "was designed to provide an adequate minimum educational offering in every school in the State," *ante*, at —, and that the Program "assur[es] a basic education for every child," *ante*, at —. But I fail to understand how the constitutional problems inherent in the financing scheme are eased by the Foundation Program. Indeed, the precise thrust of the appellants' and the Court's remarks are not altogether clear to me.

The suggestion may be that the state aid received via the Foundation Program sufficiently improves the position of property poor districts *vis-à-vis* property rich districts—in terms of educational funds—to eliminate any claim of interdistrict discrimination in available educational resources which might otherwise exist if educational funding were dependent solely upon local property taxation. Certainly the Court has recognized that to demand precise equality of treatment is normally unrealistic, and thus minor differences inherent in any practical context usually will not make out a substantial equal protection claim. See, *e. g.*, *Mayer v. City of Chicago*, 401 U. S. 189, 194–195 (1971); *Draper v. Washington*, 372 U. S. 487, 495–496 (1963); *Bain Peanut Co. v. Pinson*, 282 U. S. 499, 501 (1931). But as has already been seen, we are hardly presented here with some *de minimis* claim of discrimination resulting from the "play" necessary in any functioning system; to the contrary, it

⁴⁸ Reply Brief for Appellants 17. See also, *id.*, at 5, 15–16.

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is clear that the Foundation Program utterly fails to ameliorate the seriously discriminatory effects of the local property tax.⁴⁹

Alternatively, the appellants and the majority may believe that the Equal Protection Clause cannot be offended by substantially unequal state treatment of persons who are similarly situated so long as the State provides everyone with some unspecified amount of education which evidently is "enough."⁵⁰ The basis for such a novel view is far from clear. It is, of course, true that the Constitution does not require precise equality in the treatment of all persons. As Mr. Justice Frankfurter explained:

"The equality at which the 'equal protection' clause aims is not a disembodied equality. The Fourteenth Amendment enjoins 'the equal protection of the laws,' and laws are not abstract propositions. . . . The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." *Tigner v. Texas*, 310 U. S. 141, 147 (1940).

See also *Douglas v. California*, 372 U. S. 353, 357 (1963); *Goesaert v. Cleary*, 335 U. S. 464, 466 (1948).

A ⁴⁹ Indeed, even apart from the differential treatment inherent in the local property tax, the significant interdistrict disparities in state aid received under the Minimum Foundation School Program would seem to raise substantial equal protection questions.

IL ⁵⁰ I find particularly strong intimations of such a view in the majority's efforts to denigrate the constitutional significance of children in property poor districts "receiving a poorer quality education than that available to children in districts having more assessable wealth" with the assertion "that at least where wealth is involved the Equal Protection Clause does not require absolute equality or precisely equal advantages." *Ante.* at —. The Court, to be sure, restricts its remark to "wealth" discrimination. But the logical basis for such a restriction is not explained by the Court, nor is it otherwise apparent, see pp. — — — and n. 77, *infra*.

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But this Court has never suggested that because some "adequate" level of benefits is provided to all, discrimination in the provision of services is therefore constitutionally excusable. The Equal Protection Clause is not addressed to the minimal sufficiency but rather to the unjustifiable inequalities of state action. It mandates nothing less than that "all persons similarly circumstanced shall be treated alike." *F. S. Royster Guano Co. v. Virginia*, 253 U. S. 412, 415 (1920).

Even if the Equal Protection Clause encompassed some theory of constitutional adequacy, discrimination in the provision of educational opportunity would certainly seem to be a poor candidate for its application. Neither the majority nor appellants informs us how judicially manageable standards are to be derived for determining how much education is "enough" to excuse constitutional discrimination. One would think that the majority would heed its own fervent affirmation of judicial self-restraint before undertaking the complex task of determining at large what level of education is constitutionally sufficient. Indeed, the majority's apparent reliance upon the adequacy of the educational opportunity assured by the Texas Minimum Foundation School Program seems fundamentally inconsistent with its own recognition that educational authorities are unable to agree upon what makes for educational quality, see *ante*, at —, — n. 86 and n. 101. If, as the majority stresses, such authorities are uncertain as to the impact of various levels of funding on educational quality, I fail to see where it finds the expertise to divine that the particular levels of funding provided by the Program assure an adequate educational opportunity—much less an education substantially equivalent in quality to that which a higher level of funding might provide. Certainly appellants' mere assertion before this Court of the adequacy of the education guaranteed by the Mini-

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num Foundation School Program cannot obscure the constitutional implications of the discrimination in educational funding and objective educational inputs resulting from the local property tax—particularly since the appellees offered substantial uncontroverted evidence before the District Court impugning the now much touted “adequacy” of the education guaranteed by the Foundation Program.⁵¹

In my view, then, it is inequality—not some notion of gross inadequacy—of educational opportunity that raises a question of denial of equal protection of the laws. I find any other approach to the issue unintelligible and without directing principle. Here appellees have made a substantial showing of wide variations in educational funding and the resulting educational opportunity afforded to the school children of Texas. This discrimination is, in large measure, attributable to significant disparities in the taxable wealth of local Texas school districts. This is a sufficient showing to raise a substantial question of discriminatory state action in violation of the Equal Protection Clause.⁵²

⁵¹ See Answers to Interrogatories by Dr. Joel S. Berke, Ans. 17, p. 9; Ans. 48-51, pp. 22-24; Ans. 88-89, pp. 41-42; Deposition of Dr. Daniel C. Morgan, Jr., 52-55; Affidavit of Dr. Daniel C. Morgan, Jr., App., at 242-243.

⁵² It is true that in two previous cases this Court has summarily affirmed district court dismissals of constitutional attacks upon other state educational financing schemes. See *McInnis v. Shapiro*, 293 F. Supp. 327 (ND Ill. 1968), aff'd *per curiam sub nom. McInnis v. Ogilvie*, 394 U. S. 322 (1969); *Burruss v. Wilkerson*, 310 F. Supp. 572 (WD Va. 1969), aff'd *per curiam*, 397 U. S. 44 (1970). But those decisions cannot be considered dispositive of this action, for the thrust of those suits differed materially from that of the present case. In *McInnis*, the plaintiffs asserted that “only a financing system which apportions public funds according to the educational needs of the students satisfies the Fourteenth Amendment.” 293 F. Supp. at 331. The District Court concluded that “(1) the Fourteenth Amendment does not require public school expenditures [to] be made only on the basis of pupils’ educational

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C

Despite the evident discriminatory effect of the Texas financing scheme, both the appellants and the majority raise substantial questions concerning the precise character of the disadvantaged class in this case. The District Court concluded that the Texas financing scheme draws "distinction between groups of citizens depending upon the wealth of the district in which they live" and thus creates a disadvantaged class composed of persons living in property poor districts. See 337 F. Supp., at 282. See also *id.*, at 281. In light of the data introduced before the District Court, the conclusion that the school children of property poor districts constitute a sufficient class for our purposes seems indisputable to me.

Appellants contend, however, that in constitutional terms this case involves nothing more than discrimination against local school districts, not against individuals, since on its face the state scheme is concerned only with the provision of funds to local districts. The result of the Texas financing scheme, appellants suggest, is merely that some local districts have more available revenues for education; others have less. In that respect, they point out, the States have broad discretion

needs, and (2) the lack of judicially manageable standards makes this controversy nonjusticiable." *Id.*, at 329. The *Burress* District Court dismissed that suit essentially in reliance on *McInnis* which it found to be "scarcely distinguishable." 310 F. Supp., at 574. This suit involves no effort to obtain an allocation of school funds that considers only educational need. The District Court ruled only that the State must remedy the discrimination in the distribution of taxable local district wealth which has heretofore prevented many districts from truly exercising local fiscal control. Furthermore, the limited holding of the District Court presents none of the problems of judicial management which would exist if the federal courts were to attempt to ensure the distribution of educational funds solely on the basis of educational need, see *infra*, pp. — — —.

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in drawing reasonable distinctions between their political subdivisions. See *Griffin v. County School Board of Prince Edward County*, 377 U. S. 218, 231 (1964); *McGowan v. Maryland*, 366 U. S. 420, 427 (1961); *Salsburg v. Maryland*, 346 U. S. 545, 550-554 (1954).

But this Court has consistently recognized that where there is in fact discrimination against individual interests, the constitutional guarantee of equal protection of the laws is not inapplicable simply because the discrimination is based upon some group characteristic such as geographic location. See *Gordon v. Lance*, 403 U. S. 1, 4 (1971); *Reynolds v. Sims*, 377 U. S. 533, 565-566 (1964); *Gray v. Sanders* 372 U. S. 368, 379 (1963). Texas has chosen to provide free public education for all its citizens, and it has embodied that decision in its constitution.⁵³ Yet, having established public education for its citizens, the State, as a direct consequence of the variations in local property wealth endemic to Texas' financing scheme, has provided some Texas school children with substantially less resources for their education than others. Thus, while on its face the Texas scheme may merely discriminate between local districts, the impact of that discrimination falls directly upon the children whose educational opportunity is dependent upon where they happen to live. Consequently, the District Court correctly concluded that the Texas financing scheme discriminates, from a constitutional perspective, between school age children on the basis of the amount of taxable property located within their local districts.

In my Brother STEWART's view, however, such a description of the discrimination inherent in this case is apparently not sufficient, for it fails to define the "kind of objectively identifiable classes" that he evidently per-

⁵³ Tex. Const., Art. 7, § 1.

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ceives to be necessary for a claim to be "cognizable under the Equal Protection Clause," *ante*, at —. He asserts that this is also the view of the majority, but he is unable to cite, nor have I been able to find, any portion of the Court's opinion which remotely suggests that there is no objectively identifiable or definable class in this case. In any case, if he means to suggest that an essential predicate to equal protection analysis is the precise identification of the particular individuals who comprise the disadvantaged class, I fail to find the source from which he derives such a requirement. Certainly such precision is not analytically necessary. So long as the basis of the discrimination is clearly identified, it is possible to test it against the State's purpose for such discrimination—whatever the standard of equal protection analysis employed.⁵⁴ This is clear from our decision only last Term in *Bullock v. Carter*, 405 U. S. 134 (1972), where the Court, in striking down Texas' primary filing fees as violative of equal protection, found no impediment to equal protection analysis in the fact that the members of the disadvantaged class could not be readily identified. The Court recognized that the filing fee system tended "to deny some voters the opportunity to vote for the candidate of their choosing; at the same time it gives the affluent power to place on the ballot their own names or the names of persons they favor." *Id.*, at 144. The

⁵⁴ Problems of remedy may be another matter. If provision of the relief sought in a particular case required identification of each member of the affected class, as in the case of monetary relief, the need for clarity in defining the class is apparent. But this involves the procedural problems inherent in class action litigation, not the character of the elements essential to equal protection analysis. We are concerned here only with the latter. Moreover, it is evident that in cases such as this provision of appropriate relief, which takes the injunctive form, is not a serious problem since it is enough to direct the action of appropriate officials. Cf. *Potts v. Flak*, 313 F. 2d 284, 288-290 (CA5 1963).

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Court also recognized that "[t]his disparity in voting power based on wealth cannot be described by reference to discrete and precisely defined segments of the community as is typical of inequities challenged under the Equal Protection Clause" *Ibid.* Nevertheless, it concluded that "we would ignore reality were we not to recognize that this system falls with unequal weight on voters . . . according to their economic status." *Ibid.* The nature of the classification in *Bullock* was clear, although the precise membership of the disadvantaged class was not. This was enough in *Bullock* for purposes of equal protection analysis. It is enough here.

It may be, though, that my Brother STEWART is not in fact demanding precise identification of the membership of the disadvantaged class for purposes of equal protection analysis, but is merely unable to discern with sufficient clarity the nature of the discrimination charged in this case. Indeed, the Court itself displays some uncertainty as to the exact nature of the discrimination and the resulting disadvantaged class alleged to exist in this case. See *ante*, at —. It is, of course, essential to equal protection analysis to have a firm grasp upon the nature of the discrimination at issue. In fact, the absence of such a clear, articulatable understanding of the nature of alleged discrimination in a particular instance may well suggest the absence of any real discrimination. But such is hardly the case here.

A number of theories of discrimination have, to be sure, been considered in the course of this litigation. Thus, the District Court found that in Texas the poor and minority group members tend to live in property poor districts, suggesting discrimination on the basis of both personal wealth and race. See 337 F. Supp., at 282 and n. 3. The Court goes to great lengths to discredit the data upon which the District Court relied and thereby its conclusion that poor people live in property poor dis-

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tricts.⁵⁵ Although I have serious doubts as to the correctness of the Court's analysis in rejecting the data submitted below,⁵⁶ I have no need to join issue on these factual disputes.

⁵⁵ I assume the Court would launch the same criticism against the validity of the finding of a correlation between poor districts and racial minorities.

⁵⁶ The Court rejects the District Court's finding of a correlation between poor people and poor districts with the assertion that "there is reason to believe that the poorest families are not necessarily clustered in the poorest districts" in Texas. *Ante*, at —. In support of its conclusion the Court offers absolutely no data—which it cannot on this record—concerning the distribution of poor people in Texas to refute the data introduced below by appellees; it relies instead on a recent law review note concerned solely with the State of Connecticut, Note, A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars, 81 Yale L. J. 1303 (1972). Common sense suggests that the basis for drawing a demographic conclusion with respect to a geographically large, urban-rural, industrial-agricultural State such as Texas from a geographically small, densely populated, highly industrialized State such as Connecticut is doubtful at best.

Furthermore, the article upon which the Court relies to discredit the statistical procedures employed by Professor Berke to establish the correlation between poor people and poor districts, see n. 11, *supra*, based its criticism primarily on the fact that only four of the 110 districts studied were in the lowest of the five categories, which were determined by relative taxable property per pupil, and most districts clustered in the middle three groups. See Goldstein, Inter-district Inequalities in School Financing: A Critical Analysis of *Serrano v. Priest* and its Progeny, 120 U. Pa. L. Rev. 504, 524 n. 67 (1972). See also *ante*, at —. But the Court fails to note that the four poorest districts in the sample had over 50,000 students which constituted 10% of the students in the entire sample. It appears, moreover, that even when the richest and the poorest categories are enlarged to include in each category 20% of the students in the sample, the correlation between district and individual wealth holds true. See Brief for the Governors of Minnesota, Maine, South Dakota, Wisconsin, and Michigan as *amici curiae* 17 n. 21.

Finally, it cannot be ignored that the data introduced by appellees went unchallenged in the District Court. The majority's willingness

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I believe it is sufficient that the overarching form of discrimination in this case is between the school children of Texas on the basis of the taxable property wealth of the districts in which they happen to live. To understand both the precise nature of this discrimination and the parameters of the disadvantaged class it is sufficient to consider the constitutional principle which appellees contend is controlling in the context of educational financing. In their complaint appellees asserted that the Constitution does not permit local district wealth to be determinative of educational opportunity.⁵⁷ This is simply another way of saying, as the District Court concluded, that consistent with the guarantee of equal protection of the laws, "the quality of public education may not be a function of wealth, other than the wealth of the state as a whole." 337 F. Supp., at 284. Under such a principle, the children of a district are excessively advantaged if that district has more taxable property per pupil than the average amount of taxable property per pupil considering the State as a whole. By contrast, the children of a district are disadvantaged if that district has less taxable property per pupil than the state average. The majority attempts to disparage such a definition of the disadvantaged class as the product of an "artificially defined level" of district wealth. *Ante*, at —. But such is clearly not the case, for this is the

to permit appellants to litigate the correctness of that data for the first time before this tribunal—where effective response by appellees is impossible—is both unfair and judicially unsound.

⁵⁷ Third Amended Complaint, App., at 23. Consistent with this theory, appellees purported to represent, among others, a class composed of "all . . . school children in independent school districts . . . who . . . have been deprived of the equal protection of the law under the Fourteenth Amendment with regard to public school education because of the low value of the property lying within the independent school districts in which they reside." *Id.*, at 15.

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definition unmistakably dictated by the constitutional principle for which appellees have argued throughout the course of this litigation. And I do not believe that a clearer definition of either the disadvantaged class of Texas school children or the allegedly unconstitutional discrimination suffered by the members of that class under the present Texas financing scheme could be asked for, much less needed.⁵⁸ Whether this discrimination, against the school children of property poor districts, inherent in the Texas financing scheme is violative of the Equal Protection Clause is the question to which we must now turn.

II

In striking down the Texas financing scheme because of the interdistrict variations in taxable property wealth, the District Court determined that it was insufficient for appellants to show merely that the State's scheme was rationally related to some legitimate state purpose; rather, the discrimination inherent in the scheme had to be shown necessary to promote a "compelling state interest" in order to withstand constitutional scrutiny. The basis for this determination was two-fold: first, the financing scheme divides citizens on a wealth basis, a classification which the District Court viewed as highly suspect; and second, the discriminatory scheme directly affects what it considered to be a "fundamental interest," namely, education.

This Court has repeatedly held that state discrimination which either adversely affects a "fundamental interest," see, *e. g.*, *Dunn v. Blumstein*, 405 U. S. 330, 336-342 (1972); *Shapiro v. Thompson*, 394 U. S. 618, 629-631 (1969), or is based on a distinction of a suspect character, see, *e. g.*, *Graham v. Richardson*, 403 U. S. 365, 372

⁵⁸ The degree of judicial scrutiny that this particular classification demands is a distinct issue which I consider in Part II, C, *infra*.

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(1971); *McLaughlin v. Florida*, 379 U. S. 184, 191-192 (1964), must be carefully scrutinized to ensure that the scheme is necessary to promote a substantial, legitimate state interest. See, e. g., *Dunn v. Blumstein*, 405 U. S., at 342-343; *Shapiro v. Thompson*, 394 U. S., at 634. The majority today concludes, however, that the Texas scheme is not subject to such a strict standard of review under the Equal Protection Clause. Instead, in its view, the Texas scheme must be tested by nothing more than that lenient standard of rationality which we have traditionally applied to discriminatory state action in the context of economic and commercial matters. See, e. g., *McGowan v. Maryland*, 366 U. S. 420, 425-426 (1961); *Morey v. Doud*, 354 U. S. 457, 465-466 (1957); *F. S. Royster Guano Co. v. Virginia*, 253 U. S. 412, 415 (1920); *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 78-79 (1911). By so doing the Court avoids the telling task of searching for a substantial state interest which the Texas financing scheme, with its variations in taxable district property wealth, is necessary to further. I cannot accept such an emasculation of the Equal Protection Clause in the context of this case.

A

To begin, I must once more voice my disagreement with the Court's rigidified approach to equal protection analysis. See *Dandridge v. Williams*, 397 U. S. 471, 519-521 (1970) (dissenting opinion); *Richardson v. Belcher*, 404 U. S. 78, 90 (1971) (dissenting opinion). The Court apparently seeks to establish today that equal protection cases fall into one of two neat categories which dictate the appropriate standard of review—strict scrutiny or mere rationality. But this Court's decisions in the field of equal protection defy such easy categorization. A principled reading of what this Court has done reveals that it has applied a spectrum of standards in reviewing

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discrimination allegedly violative of the Equal Protection Clause. This spectrum clearly comprehends variations in the degree of care with which the Court will scrutinize particular classifications, depending, I believe, on the constitutional and societal importance of the interest adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn. I find in fact that many of the Court's recent decisions embody the very sort of reasoned approach to equal protection analysis for which I previously argued—that is, an approach in which “concentration [is] placed upon the character of the classification in question, the relative importance to the individuals in the class discriminated against of the governmental benefits they do not receive, and the asserted state interests in support of the classification.” *Dandridge v. Williams*, 397 U. S., at 520–521 (dissenting opinion).

I therefore cannot accept the majority's labored efforts to demonstrate that fundamental interests, which call for strict scrutiny of the challenged classification, encompass only established rights which we are somehow bound to recognize from the text of the Constitution itself. To be sure, some interests which the Court has deemed to be fundamental for purposes of equal protection analysis are themselves constitutionally protected rights. Thus, discrimination against the guaranteed right of freedom of speech has called for strict judicial scrutiny. See *Police Department of the City of Chicago v. Mosley*, 408 U. S. 92 (1972). Further, every citizen's right to travel interstate, although nowhere expressly mentioned in the Constitution, has long been recognized as implicit in the premises underlying the Document: the right “was conceived from the beginning to be a concomitant of the stronger Union the Constitution created.” *United States v. Guest*, 383 U. S. 745, 758 (1966). See also *Crandall v. Nevada*, 6 Wall. 35, 48 (1867). Consequently, the Court

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has required that a state classification affecting the constitutionally protected right to travel must be "shown to be necessary to promote a *compelling* governmental interest." *Shapiro v. Thompson*, 394 U. S. 618, 634 (1969). But it will not do to suggest that the "answer" to whether an interest is fundamental for purposes of equal protection analysis is *always* determined by whether that interest "is a right . . . explicitly or implicitly guaranteed by the Constitution," *ante*, at —.⁵⁹

I would like to know where the Constitution guarantees the right to procreate, *Skinner v. Oklahoma ex rel. Williamson*, 316 U. S. 535, 541 (1942), or the right to vote in state elections, *e. g.*, *Reynolds v. Sims*, 377 U. S. 533 (1964), or the right to an appeal from a criminal conviction, *e. g.*, *Griffin v. Illinois*, 351 U. S. 12 (1956). These are instances in which, due to the importance of the interests at stake, the Court has displayed a strong concern with the existence of discriminatory state treatment. But the Court has never said or indicated that these are interests which independently enjoy full-blown constitutional protection.

Thus, in *Buck v. Bell*, 274 U. S. 200 (1927), the Court refused to recognize a substantive constitutional guarantee of the right to procreate. Nevertheless, in *Skinner v. Oklahoma ex rel. Williamson*, 316 U. S., at 541, the Court, without impugning the continuing validity of *Buck v. Bell*, held that "strict scrutiny" of state discrimination affecting procreation "is essential," for "[m]arriage and procreation are fundamental to the very existence

⁵⁹ Indeed, the Court's theory would render the established concept of fundamental interests in the context of equal protection analysis superfluous, for the substantive constitutional right itself requires that this Court strictly scrutinize any asserted state interest for restricting or denying access to any particular guaranteed right, see, *e. g.*, *United States v. O'Brien*, 391 U. S. 367, 377 (1968); *Cor v. Louisiana*, 379 U. S. 536, 545-551 (1965).

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and survival of the race." Recently, in *Roe v. Wade*, — U. S. —, — (1973), the importance of procreation has indeed been explained on the basis of its intimate relationship with the constitutional right of privacy which we have recognized. Yet the limited stature thereby accorded any "right" to procreate is evident from the fact that at the same time the Court reaffirmed its initial decision in *Buck v. Bell*. See *Roe v. Wade*, — U. S., at —.

Similarly, the right to vote in state elections has been recognized as a "fundamental political right," because the Court concluded very early that it is "preservative of all rights." *Yick Wo v. Hopkins*, 118 U. S. 356, 370 (1886); see, e. g., *Reynolds v. Sims*, 377 U. S. 533, 561-562 (1964). For this reason, "this Court has made clear that a citizen has a *constitutionally protected right* to participate in elections *on an equal basis with other citizens in the jurisdiction*." *Dunn v. Blumstein*, 405 U. S. 330, 336 (1972) (emphasis added). The final source of such protection from inequality in the provision of the state franchise is, of course, the Equal Protection Clause. Yet it is clear that whatever degree of importance has been attached to the state electoral process when unequally distributed, the right to vote in state elections has itself never been accorded the stature of an independent constitutional guarantee.⁶⁰ See *Oregon v. Mitchell*,

⁶⁰ It is interesting that in its effort to reconcile the state voting rights cases with its theory of fundamentality the majority can muster nothing more than the contention that "[t]he constitutional underpinnings of the *right to equal treatment in the voting process* can no longer be doubted" *Ante*, at — n. 74 (emphasis added). If, by this, the Court intends to recognize a substantive constitutional "right to equal treatment in the voting process" independent of the Equal Protection Clause, the source of such a right is certainly a mystery to me.

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400 U. S. 112 (1970); *Kramer v. Union Free School District No. 15*, 395 U. S. 621, 626-629 (1969); *Harper v. Virginia Board of Elections*, 383 U. S. 663, 665 (1966).

Finally, it is likewise "true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all." *Griffin v. Illinois*, 351 U. S., at 18. Nevertheless, discrimination adversely affecting access to an appellate process which a State has chosen to provide has been considered to require close judicial scrutiny. See, e. g., *Griffin v. Illinois*, *supra*; *Douglas v. California*, 372 U. S. 353 (1963).⁶¹

The majority is, of course, correct when it suggests that the process of determining which interests are fundamental is a difficult one. But I do not think the problem is insurmountable. And I certainly do not accept the view that the process need necessarily degenerate into an unprincipled, subjective "picking-and-choosing" between various interests or that it must involve this Court in creating "substantive constitutional rights in the name of guaranteeing equal protection of the laws." *ante*, at —. Although not all fundamental interests are constitutionally guaranteed, the determination of which interests are fundamental should be firmly rooted in the text of the Constitution. The task in every case should be to determine the extent to which constitutionally guar-

⁶¹ It is true that *Griffin* and *Douglas* also involved discrimination against indigents, that is, wealth discrimination. But, as the majority points out, *ante*, at — n. 67, the Court has never deemed wealth discrimination alone to be sufficient to require strict judicial scrutiny; rather, such review of wealth classifications has been applied only where the discrimination affects an important individual interest, see, e. g., *Harper v. Virginia Board of Elections*, 383 U. S. 663 (1966). Thus, I believe *Griffin* and *Douglas* can only be understood as premised on a recognition of the fundamental importance of the criminal appellate process.

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anteed rights are dependent on interests not mentioned in the Constitution. As the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly. Thus, it cannot be denied that interests such as procreation, the exercise of the state franchise, and access to criminal appellate processes are not fully guaranteed to the citizen by our Constitution. But these interests have nonetheless been afforded special judicial consideration in the face of discrimination because they are, to some extent, interrelated with constitutional guarantees. Procreation is now understood to be important because of its interaction with the established constitutional right of privacy. The exercise of the state franchise is closely tied to basic civil and political rights inherent in the First Amendment. And access to criminal appellate processes enhances the integrity of the range of rights⁴² implicit in the Fourteenth Amendment guarantee of due process of law. Only if we closely protect the related interests from state discrimination do we ultimately ensure the integrity of the constitutional guarantee itself. This is the real lesson that must be taken from our previous decisions involving interests deemed to be fundamental.

The effect of the interaction of individual interests with established constitutional guarantees upon the degree of care exercised by this Court in reviewing state discrimination affecting such interests is amply illustrated by our decision last Term in *Eisenstadt v. Baird*, 405

⁴² See, e. g., *Duncan v. Louisiana*, 391 U. S. 145 (1968) (right to jury trial); *Washington v. Texas*, 388 U. S. 14 (1967) (right to compulsory process); *Pointer v. Texas*, 380 U. S. 400 (1965) (right to confront one's accusers).

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U. S. 438 (1972). In *Baird*, the Court struck down as violative of the Equal Protection Clause a state statute which denied unmarried persons access to contraceptive devices on the same basis as married persons. The Court purported to test the statute under its traditional standard whether there is some rational basis for the discrimination effected. *Id.*, at 446-447. In the context of commercial regulation, the Court has indicated that the Equal Protection Clause "is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. See, e. g., *McGowan v. Maryland*, 366 U. S. 420, 425 (1961); *Kotch v. Board of River Port Pilot Commissioners*, 330 U. S. 552, 557 (1947). And this lenient standard is further weighted in the State's favor by the fact that "[a] statutory discrimination will not be set aside if any state of facts reasonably may be conceived [by the Court] to justify it." *McGowan v. Maryland*, 366 U. S., at 426. But in *Baird* the Court clearly did not adhere to these highly tolerant standards of traditional rational review. For although there were conceivable state interests intended to be advanced by the statute—e. g., deterrence of premarital sexual activity; regulation of the dissemination of potentially dangerous articles—the Court was not prepared to accept these interests on their face, but instead proceeded to test their substantiality by independent analysis. See 405 U. S., at 449-454. Such close scrutiny of the State's interests was hardly characteristic of the deference shown state classifications in the context of economic interests. See, e. g., *Goesaert v. Cleary*, 335 U. S. 464 (1948); *Kotch v. Board of River Port Pilot Commissioners*, *supra*. Yet I think the Court's action was entirely appropriate for access to and use of contraceptives bears a close relationship to the individual's constitutional right of privacy. See 405 U. S., at 453-

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454; *id.*, at 463-464 (WHITE, J., concurring). See also *Roe v. Wade*, — U. S., at —.

A similar process of analysis with respect to the invidiousness of the basis on which a particular classification is drawn has also influenced the Court as to the appropriate degree of scrutiny to be accorded any particular case. The highly suspect character of classifications based on race,⁶³ nationality,⁶⁴ or alienage⁶⁵ is well established. The reasons why such classifications call for close judicial scrutiny are manifold. Certain racial and ethnic groups have frequently been recognized as "discrete and insular minorities" who are relatively powerless to protect their interests in the political process. See *Graham v. Richardson*, 403 U. S. 365, 372 (1971); cf. *United States v. Carolene Products Co.*, 304 U. S. 144, 152-153 n. 4 (1938). Moreover, race, nationality, or alienage is "in most circumstances irrelevant" to any constitutionally acceptable legislative purpose, *Hirabayashi v. United States*, 320 U. S. 81, 100." *McLaughlin v. Florida*, 379 U. S., at 192. Instead, lines drawn on such bases are frequently the reflection of historic prejudices rather than legislative rationality. It may be that all of these considerations, which make for particular judicial solicitude in the face of discrimination on the basis of race, nationality, or alienage, do not coalesce—or at least not to the same degree—in other forms of discrimination. Nevertheless, these considerations have undoubtedly influenced the care with which the Court has scrutinized other forms of discrimination.

In *James v. Strange*, 407 U. S. 128 (1972), the Court held unconstitutional a state statute which provided for

⁶³ See, e. g., *McLaughlin v. Florida*, 379 U. S., at 191-192; *Loving v. Virginia*, 388 U. S. 1, 9 (1967).

⁶⁴ See *Oyama v. California*, 332 U. S. 633, 644-646 (1948); *Korematsu v. United States*, 323 U. S. 214, 216 (1944).

⁶⁵ See *Graham v. Richardson*, 403 U. S. 365, 372 (1971).

recoupment from indigent convicts of legal defense fees paid by the State. The Court found that the statute impermissibly differentiated between indigent criminals in debt to the state and civil judgment debtors, since criminal debtors were denied various protective exemptions afforded civil judgment debtors.⁶⁶ The Court suggested that in reviewing the statute under the Equal Protection Clause, it was merely applying the traditional requirement that there be "some rationality" in the line drawn between the different types of debtors. *Id.*, at 140. Yet it then proceeded to scrutinize the statute with less than traditional deference and restraint. Thus the Court recognized "that state recoupment statutes may be token legitimate state interests" in recovering expenses and discouraging fraud. Nevertheless, MR. JUSTICE POWELL, speaking for the Court, concluded that

"these interests are not thwarted by requiring more even treatment of indigent criminal defendants with other classes of debtors to whom the statute itself repeatedly makes reference. State recoupment laws, notwithstanding the state interests they may serve, need not blight in such discriminatory fashion the hopes of indigents for self-sufficiency and self-respect." *Id.*, at 141-142.

The Court, in short, clearly did not consider the problems of fraud and collection that the state legislature might have concluded were peculiar to indigent criminal defendants to be either sufficiently important or at least

⁶⁶The Court noted that the challenged "provision strips from indigent defendants the array of protective exemptions Kansas has erected for other civil judgment debtors, including restrictions on the amount of disposable earnings subject to garnishment, protection of the debtor from wage garnishment at times of severe personal or family sickness, and exemption from attachment and execution on a debtor's personal clothing, books, and tools of trade." 407 U. S., at 135.

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sufficiently substantiated to justify denial of the protective exemptions afforded to all civil judgment debtors, to a class composed exclusively of indigent criminal debtors.

Similarly, in *Reed v. Reed*, 404 U. S. 71 (1971), the Court, in striking down a state statute which gave men preference over women when persons of equal entitlement apply for assignment as an administrator of a particular estate, resorted to a more stringent standard of equal protection review than that employed in cases involving commercial matters. The Court indicated that it was testing the claim of sex discrimination by nothing more than whether the line drawn bore "a rational relationship to a state objective," which it recognized as a legitimate effort to reduce the work of probate courts in choosing between competing applications for letters of administration. *Id.*, at 76. Accepting such a purpose, the Idaho Supreme Court had thought the classification to be sustainable on the basis that the legislature might have reasonably concluded that, as a rule, men have more experience than women in business matters relevant to the administration of estate. 93 Idaho 511, 514, 465 P. 2d 635, 638 (1970). This Court, however, concluded that "[t]o give a mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment" *Id.*, at 76. This Court, in other words, was unwilling to consider a theoretical and unsubstantiated basis for distinction—however reasonable it might appear—sufficient to sustain a statute discriminating on the basis of sex.

James and *Reed* can only be understood as instances in which the particularly invidious character of the classification caused the Court to pause and scrutinize with more than traditional care the rationality of state dis-

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crimination. Discrimination on the basis of past criminality and on the basis of sex posed for the Court the spectre of forms of discrimination which it implicitly recognized to have deep social and legal roots without necessarily having any basis in actual differences. Still, the Court's sensitivity to the invidiousness of the basis for discrimination is perhaps most apparent in its decisions protecting the interests of children born out of wedlock from discriminatory state action. See *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164 (1972); *Levy v. Louisiana*, 391 U. S. 68 (1968).

In *Weber*, the Court struck down a portion of a state workmen's compensation statute that relegated unacknowledged illegitimate children of the deceased to a lesser status with respect to benefits than that occupied by legitimate children of the deceased. The Court acknowledged the true nature of its inquiry in cases such as these: "What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?" *Id.*, at 173. Embarking upon a determination of the relative substantiality of the State's justifications for the classification, the Court rejected the contention that the classifications reflected what might be presumed to have been the deceased's preference of beneficiaries as "not compelling . . . where dependency on the deceased is a prerequisite to anyone's recovery" *Ibid.* Likewise, it deemed the relationship between the State's interest in encouraging legitimate family relationships and the burden placed on the illegitimates too tenuous to permit the classification to stand. *Ibid.* A clear insight into the basis of the Court's action is provided by its conclusion:

"[I]mposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no

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child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as an unjust—way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth.” 406 U. S., at 175–176 (footnote omitted).

Status of birth, like the color of one’s skin, is something which the individual cannot control, and should generally be irrelevant in legislative considerations. Yet illegitimacy has long been stigmatized by our society. Hence, discrimination on the basis of birth—particularly when it affects innocent children—warrants special judicial consideration.

In summary, it seems to me inescapably clear that this Court has consistently adjusted the care with which it will review state discrimination in light of the constitutional significance of the interests affected and the invidiousness of the particular classification. In the context of economic interests, we find that discriminatory state action is almost always sustained for such interests are generally far removed from constitutional guarantees. Moreover, “[t]he extremes to which the Court has gone in dreaming up rational bases for state regulation in that area may in many instances be ascribed to a healthy revulsion from the Court’s earlier excesses in using the Constitution to protect interests that have more than enough power to protect themselves in the legislative halls.” *Dandridge v. Williams*, 397 U. S., at 520 (dissenting opinion). But the situation differs markedly when discrimination against important individual interests with constitutional implications and against particularly disadvantaged or powerless classes is involved. The majority suggests, however, that a variable standard of review would give this Court the appearance of a “super-

legislature." *Ante*, at —. I cannot agree. Such an approach seems to me a part of the guarantees of our Constitution and of the historic experiences with oppression of and discrimination against discrete, powerless minorities which underlie that Document. In truth, the Court itself will be open to the criticism raised by the majority so long as it continues on its present course of effectively selecting in private which cases will be afforded special consideration without acknowledging the true basis of its action.⁶⁷ Opinions such as those in *Reed* and *James* seem drawn more as efforts to shield rather than to reveal the true basis of the Court's decisions. Such obfuscated action may be appropriate to a political body such as a legislature, but it is not appropriate to this Court. Open debate of the bases for the Court's action is essential to the rationality and consistency of our decisionmaking process. Only in this way can we avoid the label of legislature and ensure the integrity of the judicial process.

Nevertheless, the majority today attempts to force this case into the same category for purposes of equal protection analysis as decisions involving discrimination affecting commercial interests. By so doing, the majority singles this case out for analytic treatment at odds with what seems to me to be the clear trend of recent decisions in this Court, and thereby ignores the constitutional importance of the interest at stake and the invidiousness of the particular classification, factors that call for far more than the lenient scrutiny of the Texas financing scheme which the majority pursues. Yet if the discrimination inherent in the Texas scheme is scrutinized with the care demanded by the interest and classification present in

⁶⁷ See generally Gunther, *The Supreme Court, 1971 Term: Foreword, In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 Harv. L. Rev. 1 (1972).

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this case, the unconstitutionality of that scheme is unmistakable.

B

Since the Court now suggests that only interests guaranteed by the Constitution are fundamental for purposes of equal protection analysis and since it rejects the contention that public education is fundamental, it follows that the Court concludes that public education is not constitutionally guaranteed. It is true that this Court has never deemed the provision of free public education to be required by the Constitution. Indeed, it has on occasion suggested that state supported education is a privilege bestowed by a State on its citizens. See *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337, 349 (1938). Nevertheless, the fundamental importance of education is amply indicated by the prior decisions of this Court, by the unique status accorded public education by our society, and by the close relationship between education and some of our most basic constitutional values.

The special concern of this Court with the educational process of our country is a matter of common knowledge. Undoubtedly, this Court's most famous statement on the subject is that contained in *Brown v. Board of Education*, 347 U. S. 483, 493 (1954):

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values,

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in preparing him for later professional training, and in helping to adjust normally to his environment. . . ."

Only last Term the Court recognized that "[p]roviding public schools ranks at the very apex of the function of a State." *Wisconsin v. Yoder*, 406 U. S. 205, 213 (1972). This is clearly borne out by the fact that in 48 of our 50 States the provision of public education is mandated by the state constitution.⁶⁸ No other state function is so uniformly recognized⁶⁹ as an essential element of our society's well-being. In large measure, the explanation for the special importance attached to education must rest, as the Court recognized in *Yoder*, *id.*, at 221, on the facts that "some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system" and that "education prepares individuals to be self-reliant and self-sufficient participants in society." Both facets of this observation are suggestive of the substantial relationship which education bears to guarantees of our Constitution.

Education directly affects the ability of a child to exercise his First Amendment interests both as a source and as a receiver of information and ideas, whatever interests he may pursue in life. This Court's decision in *Sweezy v. New Hampshire*, 354 U. S. 234, 250 (1957), speaks of the right of students "to inquire, to study, and

⁶⁸ See Brief of the National Education Association, et al., as *amicus curiae*, App. A. All 48 of the 50 States which mandate public education also have compulsory attendance laws which require school attendance for eight years or more. *Id.*, at 20-21.

⁶⁹ Prior to this Court's decision in *Brown v. Board of Education*, 347 U. S. 483 (1954), every State had a constitutional provision directing the establishment of a system of public schools. But after *Brown*, South Carolina repealed its constitutional provision, and Mississippi made its constitutional provision discretionary with the state legislature.

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to evaluate, to gain new maturity and understanding” Thus, we have not casually described the classroom as the “‘marketplace of ideas.’” *Keyishian v. Board of Regents*, 385 U. S. 589, 603 (1967). The opportunity for formal education may not necessarily be the essential determinant of an individual’s ability to enjoy throughout his life the rights of free speech and association guaranteed to him by the First Amendment. But such an opportunity may enhance the individual’s enjoyment of those rights, not only during but also following school attendance. Thus, in the final analysis, “the pivotal position of education to success in American society and its essential role in opening up to the individual the central experiences of our culture lend it an importance that is undeniable.”⁷⁰

Of particular importance is the relationship between education and the political process. “Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government.” *School District of Abington Township v. Schempp*, 374 U. S. 203, 230 (1963) (BRENNAN, J., concurring). Education serves the essential function of instilling in our young an understanding of and appreciation for the principles and operation of our governmental processes.⁷¹

⁷⁰ Developments in the Law—Equal Protection, 82 Harv. L. Rev. 1065, 1129 (1969).

⁷¹ The President’s Commission on School Finance, Schools, People, and Money: the Need for Educational Reform 11 (1972), concluded that “[l]iterally, we cannot survive as a nation or as individuals without [education].” It further observed that

“[I]n a democratic society, public understanding of public issues is necessary for public support. Schools generally include in their courses of instruction a wide variety of subjects related to the history, structure and principles of American government at all levels. In so doing, schools provide students with a background of knowledge

Education may instill the interest and provide the tools necessary for political discourse and debate. Indeed, it has frequently been suggested that education is the dominant factor affecting political consciousness and participation.⁷² A system of "[c]ompetition in ideas and governmental policies is at the core of our electoral process and of First Amendment freedoms." *Williams v. Rhodes*, 393 U. S. 23, 32 (1968). But of most immediate and direct concern must be the demonstrated effect of education on the exercise of the franchise by the electorate. The right to vote in federal elections is conferred by Art. I, § 2, and the Seventeenth Amendment of the Constitution, and access to the state franchise has been afforded special protection because it is "preservative of other basic civil and political rights." *Reynolds v. Sims*, 377 U. S. 533, 561-562 (1964). Data from the Presidential Election of 1968 clearly demonstrates a direct relationship between participation in the electoral prod-

which is deemed an absolute necessity for responsible citizenship." *Id.*, at 13-14.

⁷² See J. Guthrie, G. Kleindorfer, H. Levin, & R. Stout, *Schools and Inequality* 103-105 (1971); R. Hess & J. Torney, *The Development of Political Attitudes in Children* 217-218 (1967); Campbell, *The Passive Citizen*, VI *Acta Sociologica*, Nos. 1-2, 9, 20-21 (1962).

That education is the dominant factor in influencing political participation and awareness is sufficient, I believe, to dispose of the Court's suggestion that, in all events, there is no indication that Texas is not providing all of its children with a sufficient education to enjoy the right of free speech and to participate fully in the political process. *Ante*, at —. There is, in short, no limit on the amount of free speech or political participation that the Constitution guarantees. Moreover, it should be obvious that the political process, like most other aspects of social intercourse, is to some degree competitive. It is thus of little benefit to an individual from a property poor district to have "enough" education if those around him have more than "enough." Cf. *Sweatt v. Painter*, 339 U. S. 629, 633-634 (1950).

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ess and level of educational attainment;⁷³ and, as this Court recognized in *Gaston v. United States*, 395 U. S. 285, 296 (1969), the quality of education offered may influence a child's decision to "enter or remain in school." In is this very sort of intimate relationship between a particular personal interest and specific constitutional guarantees that has heretofore caused the Court to attach special significance, for purposes of equal protection analysis, to individual interests such as procreation and the exercise of the state franchise.⁷⁴

⁷³ See United States Department of Commerce, Bureau of the Census, Voting and Registration in the Election of November 1968, Current Population Reports, Series P-20, No. 192, Table 4, p. 17 (1968). See also Levin, *The Costs to the Nation of Inadequate Education*, Committee Print of the Senate Select Committee on Equal Educational Opportunity, 92d Cong., 2d Sess., pp. 46-47 (1972).

⁷⁴ I believe that the close nexus between education and our established constitutional values with respect to freedom of speech and participation in the political process makes this a different case than our prior decisions concerning discrimination affecting public welfare, see, *e. g.*, *Dandridge v. Williams*, 397 U. S. 471 (1970), or housing, see, *e. g.*, *Lindsey v. Normet*, 405 U. S. 56 (1972). There can be no question that, as the majority suggests, constitutional rights may be less meaningful for someone without enough to eat or without decent housing. *Ante*, at —. But the crucial difference lies in the closeness of the relationship. Whatever the severity of the impact of insufficient food or inadequate housing on a person's life, they have never been considered to bear the same direct and immediate relationship to constitutional concerns for free speech and for our political processes as education has long been recognized to bear. Perhaps, the best evidence of this fact is the unique status which has been accorded public education as the single public service nearly unanimously guaranteed in the constitutions of our States, see n. 65, *supra*. Education, in terms of constitutional values, is much more analogous in my judgment, to the right to vote in state elections than to public welfare or public housing. Indeed, it is not without significance that we have long recognized education as an essential step in providing the disadvantaged with the tools necessary to achieve economic self-sufficiency.

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While ultimately disputing little of this, the majority seeks refuge in the fact that the Court has “never presumed to possess either the ability or the authority to guarantee the citizenry the most *effective* speech or the most *informed* electoral choice.” *Ante*, at —. This serves only to blur what is in fact at stake. With due respect, the issue is neither provision of the most *effective* speech nor of the most *informed* vote. Appellees do not now seek the best education Texas might provide. They do seek, however, an end to state discrimination resulting from the unequal distribution of taxable district property wealth that directly impairs the ability of some districts to provide the same educational opportunity that other districts can provide with the same or even substantially less tax effort. The issue is, in other words, one of discrimination that affects the quality of the education which Texas has chosen to provide its children; and, the precise question here is what importance should attach to education for purposes of equal protection analysis of that discrimination. As this Court held in *Brown v. Board of Education*, 347 U. S., at 493: The opportunity of education; “where the state has undertaken to provide it, is a right which must be made available to all on equal terms.” The factors just considered, including the relationship between education and the social and political interests enshrined within the Constitution, compel us to recognize the fundamentality of education and to scrutinize with appropriate care the bases for state discrimination affecting equality of educational opportunity in Texas school districts⁷⁵—a con-

⁷⁵ The majority’s reliance on this Court’s traditional deference to legislative bodies in matters of taxation falls wide of the mark in the context of this particular case. See *ante*, at —. The decisions on which the Court relies were simply taxpayer suits challenging the constitutionality of a tax burden in the face of exemptions or differential taxation afforded to others. See, e. g., *Allied*.

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clusion which is only strengthened when we consider the character of the classification in this case.

C

The District Court found that in discriminating between Texas school children on the basis of the amount of taxable property wealth located in the district in which they live, the Texas financing scheme created a form of wealth discrimination. This Court has frequently recognized that discrimination on the basis of wealth may create a classification of a suspect character and thereby call for exacting judicial scrutiny. See, e. g., *Griffin v. Illinois*, 351 U. S. 12 (1951); *Douglas v. California*, 372 U. S. 353 (1963); *McDonald v. Board of Election Commissioners of Chicago*, 394 U. S. 802, 807 (1969). The

Stores of Ohio, Inc. v. Bowers, 358 U. S. 522 (1959); *Madden v. Kentucky*, 309 U. S. 83 (1940); *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495 (1937); *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232 (1890). There is no question that from the perspective of the taxpayer, the Equal Protection Clause "imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of an excise upon various products." *Allied Stores of Ohio, Inc. v. Bowers*, 358 U. S., at 526-527. But in this case we are presented with a claim of discrimination of an entirely different nature—a claim that the revenue producing mechanism directly discriminates against the interests of some of the intended beneficiaries; and in contrast to the taxpayer suits, the interest adversely affected is of substantial constitutional and societal importance. Hence, a different standard of equal protection review than has been employed in the taxpayer suits is appropriate here. It is true that affirmance of the District Court decision would to some extent intrude upon the State's taxing power insofar as it would be necessary for the State to at least equalize taxable district wealth. But contray to the suggestions of the majority, affirmance would not impose a strait jacket upon the revenue raising powers of the State, and would certainly not spell the end of the local property tax. See *infra*, pp. ———.

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majority, however, considers any wealth classification in this case to lack certain essential characteristics which it contends are common to the instances of wealth discrimination that this Court has heretofore recognized. We are told that in every prior case involving a wealth classification, the members of the disadvantaged class have "shared two distinguishing characteristics: because of their impecunity they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit." *Ante*, at —. I cannot agree. The Court's distinctions may be sufficient to explain the decisions in *Williams v. Illinois*, 399 U. S. 235 (1970); *Tate v. Short*, 401 U. S. 395 (1971); and even *Bullock v. Carter*, 405 U. S. 134 (1972). But they are not in fact consistent with the decisions in *Harper v. Virginia Board of Elections*, 383 U. S. 663 (1966), or *Griffin v. Illinois*, *supra*, or *Douglas v. California*, *supra*.

In *Harper*, the Court struck down as violative of the Equal Protection Clause an annual Virginia poll tax of \$1.50, payment of which by persons over the age of 21 was a prerequisite to voting in Virginia elections. In part, the Court relied on the fact that the poll tax interfered with a fundamental interest—the exercise of the state franchise. In addition, though, the Court emphasized that "[l]ines drawn on the basis of wealth or property . . . are traditionally disfavored." *Id.*, at 668. Under the first part of the theory announced by the majority the disadvantaged class in *Harper*, in terms of a wealth analysis, should have consisted only of those too poor to afford the \$1.50 necessary to vote. But the *Harper* Court did not see it that way. In its view, the Equal Protection Clause "bars a system which excludes [from the franchise] those unable to pay a fee to vote or who fail to pay." *Ibid.* (Emphasis added.) So far as the Court was concerned, the "degree of discrimination

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[was] irrelevant." *Ibid.* Thus, the Court struck down the poll tax *in toto*; it did not order merely that those too poor to pay the tax be exempted; complete impecunity clearly was not determinative of the limits of the disadvantaged class, nor was it essential to make an equal protection claim.

Similarly, *Griffin* and *Douglas* refute the majority's contention that we have in the past required an absolute deprivation before subjecting wealth classifications to strict scrutiny. The Court characterizes *Griffin* as a case concerned simply with the denial of a transcript or an adequate substitute therefor, and *Douglas* as involving the denial of counsel. But in both cases the question was in fact whether "a State that [grants] *appellate review* can do so in a way that discriminates against some convicted defendants on account of their poverty." *Griffin v. Illinois*, 351 U. S., at 18 (emphasis added). In that regard, the Court concluded that inability to purchase a transcript denies "the poor an adequate *appellate review* accorded to all who have money enough to pay the costs in advance," *ibid.* (emphasis added), and that "the type of an *appeal* a person is afforded . . . hinges upon whether or not he can pay for the assistance of counsel," *Douglas v. California*, 372 U. S., at 355-356 (emphasis added). The right of appeal itself was not absolutely denied to those too poor to pay; but because of the cost of a transcript and of counsel, the appeal was a substantially less meaningful right for the poor than for the rich.⁷⁶ It was on these terms that the

⁷⁶ This does not mean that the Court has demanded precise equality in the treatment of the indigent and the person of means in the criminal process. We have never suggested, for instance, that the Equal Protection Clause requires the best lawyer money can buy for the indigent. We are hardly equipped with the objective standards which such a judgment would require. But we have pursued the goal of substantial equality of treatment in the face of clear dis-

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Court found a denial of equal protection, and those terms clearly encompassed degrees of discrimination on the basis of wealth which do not amount to outright denial of the affected right or interest."

This is not to say that the form of wealth classification in this case does not differ significantly from those recognized in the previous decisions of this Court. Our prior cases have dealt essentially with discrimination on

parities in the nature of the appellate process afforded rich versus poor. See, e. g., *Draper v. Washington*, 372 U. S. 487, 495-496 (1963); cf. *Coppedge v. United States*, 369 U. S. 438, 447 (1962).

"Even putting aside its misreading of *Griffin* and *Douglas*, the Court fails to offer any reasoned constitutional basis for restricting cases involving wealth discrimination to instances in which there is an absolute deprivation of the interest affected. As I have already discussed, see *supra*, p. —, the Equal Protection Clause guarantees equality of treatment of those persons who are similarly situated; it does not merely bar some form of excessive discrimination between such persons. Outside the context of wealth discrimination, the Court's reapportionment decisions clearly indicate that relative discrimination is within the purview of the Equal Protection Clause. Thus, in *Reynolds v. Sims*, 377 U. S. 533, 562-563 (1964), the Court recognized:

"It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. . . . Of course, the effect of state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical. Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. . . . Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. . . . One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination.'"

See also *Gray v. Sanders*, 372 U. S. 368, 380-381 (1963). The Court gives no explanation why a case involving wealth discrimination should be treated any differently.

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the basis of personal wealth.⁷⁸ Here, by contrast, the children of the disadvantaged Texas school districts are being discriminated against not necessarily because of their personal wealth or the wealth of their families, but because of the taxable property wealth of the residents of the district in which they happen to live. The appropriate question, then, is whether the same degree of judicial solicitude and scrutiny that has previously been afforded wealth classifications is warranted here.

As the Court points out, *ante*, at —, no previous decision has deemed the presence of just a wealth classification to be sufficient basis to call forth "rigorous judicial scrutiny" of allegedly discriminatory state action. Compare, *e. g.*, *Harper v. Virginia Board of Elections*, *supra*, with, *e. g.*, *James v. Valtierra*, 402 U. S. 137 (1971). That wealth classifications alone have not necessarily been considered to bear the same high degree of suspectness as have classifications based on, for instance, race or alienage may be explainable on a number of grounds. The "poor" may not be seen as politically powerless as certain discrete and insular minority groups.⁷⁹ Personal poverty may entail much the same social stigma as historically attached to certain racial or ethnic groups.⁸⁰ But personal poverty is not a permanent disability; its shackles may be escaped. Perhaps, most importantly, though, personal wealth may not

⁷⁸ But cf. *Bullock v. Carter*, 405 U. S. 134, 144 (1972), where prospective candidates' threatened exclusion from a primary ballot because of their inability to pay a filing fee was seen as discrimination against both the impecunious candidates and the "less affluent segment of the community" that supported such candidates but was also too poor as a group to contribute enough for the filing fees.

⁷⁹ But cf. M. Harrington, *The Other America* 13-17 (Penguin ed. 1963).

⁸⁰ See E. Banfield, *The Unheavenly City* 63, 75-76 (1970); cf. R. Lynd & H. Lynd, *Middletown in Transition* 450 (1937).

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necessarily share the general irrelevance as basis for legislative action that race or nationality is recognized to have. While the "poor" have frequently been a legally disadvantaged group,⁸¹ it cannot be ignored that social legislation must frequently take cognizance of the economic status of our citizens. Thus, we have generally gauged the invidiousness of wealth classifications with an awareness of the importance of the interests being affected and the relevance of personal wealth to those interests. See *Harper v. Virginia Board of Elections*, *supra*.

When evaluated with these considerations in mind, it seems to me that discrimination on the basis of group wealth in this case likewise calls for careful judicial scrutiny. First, it must be recognized that while local district wealth may serve other interests,⁸² it bears no relationship whatsoever to the interest of Texas school children in the educational opportunity afforded them by the State of Texas. Given the importance of that interest, we must be particularly sensitive to the invidious characteristics of any form of discrimination that is not clearly intended to serve it, as opposed to some other distinct state interest. Discrimination on the basis of group wealth may not, to be sure, reflect the social stigma frequently attached to personal poverty. Nevertheless, insofar as group wealth discrimination involves wealth over which the disadvantaged individual has no significant control,⁸³ it represents in fact a more serious basis of

⁸¹ Cf. *City of New York v. Miln*, 11 Pet. 102, 142 (1837).

⁸² Theoretically, at least, it may provide a mechanism for implementing Texas' asserted interest in local educational control, see *infra*, pp. ———.

⁸³ True, a family may move to escape a property poor school district, assuming it has the means to do so. But such a view would itself raise a serious constitutional question concerning an impermissible burdening of the right to travel, or, more precisely, the con-

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discrimination than does personal wealth. For such discrimination is no reflection of the individual's characteristics or his abilities. And thus—particularly in the context of a disadvantaged class composed of children—we have previously treated discrimination on a basis which the individual cannot control as constitutionally disfavored. Cf. *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164 (1972); *Levy v. Louisiana*, 391 U. S. 68 (1968).

The disability of the disadvantaged class in this case extends as well into the political processes upon which we ordinarily rely as adequate for the protection and promotion of all interests. Here legislative reallocation of the State's property wealth must be sought in the face of inevitable opposition from significantly advantaged districts that have a strong vested interest in the preservation of the status quo, a problem not completely dissimilar to that faced by underrepresented districts prior to the Court's intervention in the process of reapportionment,⁸⁴ see *Baker v. Carr*, 369 U. S. 186, 191-192 (1962).

Nor can we ignore the extent to which, in contrast to our prior decisions, the State is responsible for the wealth discrimination in this instance. *Griffin*, *Douglas*, *Williams*, *Tate*, and our other prior cases have dealt with discrimination on the basis of indigency which was attributable to the operation of the private sector. But we have no such simple *de facto* wealth discrimination here. The means for financing public education in Texas are selected and specified by the State. It is the State

comitant right to remain where one is. Cf. *Shapiro v. Thompson*, 394 U. S. 618, 629-631 (1969).

⁸⁴ Indeed, the political difficulties that seriously disadvantaged districts face in securing legislative redress are augmented by the fact that little support is likely to be secured from only mildly disadvantaged districts. Cf. *Gray v. Sanders*, 372 U. S. 368 (1963). See also n. 2, *supra*.

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that has created local school districts, and tied educational funding to the local property tax and thereby to local district wealth. At the same time, governmentally imposed land use controls have undoubtedly encouraged and rigidified natural trends in the allocation of particular areas for residential or commercial use,⁸⁵ and thus determined each district's amount of taxable property wealth. In short, this case, in contrast to the Court's previous wealth discrimination decisions, can only be seen as "unusual in the extent to which governmental action is the cause of the wealth classifications."⁸⁶

In the final analysis, then, the invidious characteristics of the group wealth classification present in this case merely serves to emphasize the need for careful judicial scrutiny of the State's justifications for the resulting inter-district discrimination in the educational opportunity afforded to the school children of Texas.

D

The nature of our inquiry into the justifications for state discrimination is essentially the same in all equal protection cases: We must consider the substantiality of the state interests sought to be served, and we must scrutinize the reasonableness of the means by which the State has sought to advance its interests. See *Police Dept. of the City of Chicago v. Mosley*, 408 U. S. 92, 95 (1972). Differences in the application of this test are, in my view, a function of the constitutional importance of the interests at stake and the invidiousness

⁸⁵ See Tex. Cities, Towns, & Villages Code Ann. §§ 1011a-1011j. See also, e. g., *Skinner v. Recd*, 265 S. W. 2d 850 (Tex. Civ. App. 1954); *City of Corpus Christi v. Jones*, 144 S. W. 2d 388 (Tex. Civ. App. 1940).

⁸⁶ *Serrano v. Priest*, 5 Cal. 3d 584, 603, 487 P. 2d 1241, 1254, 96 Cal. Rptr. 601, 614 (1971). See also *Van Dusartz v. Hatfield*, 334 F. Supp. 876, 875-876 (Minn. 1971).

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of the particular classification. In terms of the asserted state interests, the Court has indicated that it will require, for instance, a "compelling," *Shapiro v. Thompson*, 394 U. S. 618, 634 (1969), or a "substantial" or "important" *Dunn v. Blumstein*, 405 U. S. 330, 343 (1972), state interest to justify discrimination affecting individual interests of constitutional significance. Whatever the differences, if any, in these descriptions of the character of the state interest necessary to sustain such discrimination, basic to each is, I believe, a concern with the legitimacy and the reality of the asserted state interests. Thus, when interests of constitutional importance are at stake, the Court does not stand ready to credit the State's classification with any conceivable legitimate purpose,⁸⁷ but demands a clear showing that there are legitimate state interests which the classification was in fact intended to serve. Beyond the question of the adequacy of the state's purpose for the classification, the Court traditionally has become increasingly sensitive to the means by which a State chooses to act as its action affects more directly interests of constitutional significance. See, *e. g.*, *United States v. Robel*, 389 U. S. 258, 265 (1967); *Shelton v. Tucker*, 364 U. S. 479, 488 (1960). Thus, by now, "less restrictive alternatives" analysis is firmly established in equal protection jurisprudence. See *Dunn v. Blumstein*, 405 U. S. 330, 343 (1972); *Kramer v. Union Free School District No. 15*, 395 U. S. 621, 627 (1969). It seems to me that the range of choice we are willing to accord the State in selecting the means by which it will act and the care with which we scrutinize the effectiveness of the means which the State selects also must reflect the consti-

⁸⁷ Cf., *e. g.*, *Two Guys from Harrison-Allentown, Inc. v. McGinley*, 366 U. S. 582 (1961); *McGowan v. Maryland*, 366 U. S. 420 (1961); *Goesaert v. Cleary*, 335 U. S. 464 (1948).

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tutional importance of the interest affected and the invidiousness of the particular classification. Here both the nature of the interest and the classification dictate close judicial scrutiny of the purposes which Texas seeks to serve with its present educational financing scheme and of the means it has selected to serve that purpose.

The only justification offered by appellants to sustain the discrimination in educational opportunity caused by the Texas financing scheme is local educational control. Presented with this justification, the District Court concluded that "[n]ot only are defendants unable to demonstrate compelling state interests for their classification based on wealth, they fail even to establish a reasonable basis for these classifications." 337 F. Supp., at 284. I must agree with this conclusion.

At the outset, I do not question that local control of public education, as an abstract matter, constitutes a very substantial state interest. We observed only last Term that "[d]irect control over decisions vitally affecting the education of one's children is a need strongly felt in our society." *Wright v. Council of the City of Emporia*, 407 U. S. 451, 469 (1972). See also *id.*, at 477-478 (BURGER, C. J., dissenting). The State's interest in local educational control—which certainly includes questions of educational funding—has deep roots in the inherent benefits of community support for public education. Consequently, true state dedication to local control would present, I think, a substantial justification to weigh against simply interdistrict variations in the treatment of a State's school children. But I need not now decide how I might ultimately strike the balance were we confronted with a situation where the State's sincere concern for local control inevitably produced educational inequality. For on this record, it is apparent that the State's purported concern with local control is offered

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primarily as an excuse rather than as a justification for interdistrict inequality.

In Texas statewide laws regulate in fact the most minute details of local public education. For example, the State prescribes required courses.⁸⁸ All textbooks must be submitted for state approval,⁸⁹ and only approved textbooks may be used.⁹⁰ The State has established the qualifications necessary for teaching in Texas public schools and the procedures for obtaining certification.⁹¹ The State has even legislated on the length of the school day.⁹² Texas' own courts have said:

"As a result of the acts of the Legislature our school system is not of mere local concern but it is statewide. While a school district is local in territorial limits, it is an integral part of the vast school system which is coextensive with the confines of the State of Texas." *Treadway v. Whitney Independent School District*, 205 S. W. 2d 97, 99 (Tex. Civil App. 1947).

See also *El Dorado Independent School District v. Tisdale*, 3 S. W. 2d 420, 422 (Tex. Comm. App. 1928).

Moreover, even if we accept Texas' general dedication to local control in educational matters, it is difficult to find any evidence of such dedication with respect to fiscal matters. It ignores reality to suggest—as the Court does, *ante*, at ———— that the local property tax element of the Texas financing scheme reflects a conscious legislative effort to provide school districts with local

⁸⁸ Tex. Educ. Code Ann. §§ 21.101–21.117. Criminal penalties are provided for failure to teach certain required courses. *Id.*, §§ 4.15–4.16.

⁸⁹ *Id.*, §§ 12.11–12.35.

⁹⁰ *Id.*, § 12.62.

⁹¹ *Id.*, §§ 13.031–13.046.

⁹² *Id.*, § 21.004.

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fiscal control. If Texas had a system truly dedicated to local fiscal control one would expect the quality of the educational opportunity provided in each district to vary with the decision of the voters in that district as to the level of sacrifice they wish to make for public education. In fact, the Texas scheme produces precisely the opposite result. Local school districts cannot choose to have the best education in the State by imposing the highest tax rate. Instead, the quality of the educational opportunity offered by any particular district is largely determined by the amount of taxable property located in the district—a factor over which local voters can exercise no control.

The study introduced in the District Court showed a direct inverse relationship between equalized taxable district property wealth and district tax effort with the result that the property poor districts making the highest tax effort obtained the lowest per pupil yield.⁹³ The implications of this situation for local choice are illustrated by again comparing the Edgewood and Alamo Heights School Districts. In 1967-1968, Edgewood, after contributing its share to the Local Fund Assignment, raised only \$26 per pupil through its local property tax, whereas Alamo Heights was able to raise \$333 per pupil. Since the funds received through the Minimum Foundation School Program are to be used only for minimum professional salaries, transportation costs, and operating expenses, it is not hard to see the lack of local choice—with respect to higher teacher salaries to attract more and better teachers, physical facilities, library books, and facilities, special courses, or participation in special state and federal matching funds programs—under which a property poor district such as Edgewood is forced to

⁹³ See App. II, *infra*.

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labor.⁹⁴ In fact, because of the difference in taxable local property wealth, Edgewood would have to tax itself almost nine times as heavily to obtain the same yield as Alamo Heights.⁹⁵ At present, then, local control is a myth for many of the local school districts in Texas. As one district court has observed, "rather than reposing in each school district the economic power to fix its own level of per pupil expenditure, the State has so arranged the structure as to guarantee that some districts will spend low (with high taxes) while others will spend high (with low taxes)." *Van Dusartz v. Hatfield*, 334 F. Supp. 870, 876 (Minn. 1971).

In my judgment, any substantial degree of scrutiny of the operation of the Texas financing scheme reveals that the State has selected means wholly inappropriate to secure its purported interest in assuring its school districts local fiscal control.⁹⁶ At the same time, appellees have pointed out a variety of alternative financing schemes which may serve the State's purported interest in local control as well, if not better, than the present scheme without the current impairment of the educational oppor-

⁹⁴ See Affidavit of Dr. Jose Cardenas, Superintendent of Schools, Edgewood Independent School District, App., at 234-238.

⁹⁵ See App. IV, *infra*.

⁹⁶ My Brother WHITE, in concluding that the Texas financing scheme runs afoul of the Equal Protection Clause, likewise finds on analysis that the means chosen by Texas—local property taxation dependent upon local taxable wealth—is completely unsuited in its present form to the achievement of the asserted goal of providing local fiscal control. Although my Brother WHITE purports to reach this result by application of that lenient standard of mere rationality traditionally applied in the context of commercial interests, it seems to be that the care with which he scrutinizes the practical effectiveness of the present local property tax as a device for affording local fiscal control reflects the application of a more stringent standard of review, a standard which at the least is influenced by the constitutional significance of the process of public education.

tunity of vast numbers of Texas school children.⁹⁷ I see no need, however, to explore the practical or constitutional merits of those suggested alternatives at this time, for whatever their positive or negative features, experience with the present financing scheme impugns any suggestion that it constitutes a serious effort to provide local fiscal control. If, for the sake of local education control, this Court is to sustain interdistrict discrimination in the educational opportunity afforded Texas school children, it should require that the State present something more than the mere sham now before us.

III

In conclusion it is essential to recognize that an end to the wide variations in taxable district property wealth inherent in the Texas financing scheme would entail none of the untoward consequences suggested by the Court or by the appellants.

First, affirmance of the District Court's decisions would hardly sound the death knell for local control of education. It would mean neither centralized decisionmaking nor federal court intervention in the operation of public schools. Clearly, this suit has nothing to do with local decisionmaking with respect to educational policy or even educational spending. It involves only a narrow aspect of local control—namely, local control over the raising of educational funds. In fact, in striking down interdistrict disparities in taxable local wealth, the District Court took the course which is most likely to make true local control over educational decisionmaking a reality for *all* Texas school districts.

Nor does the District Court's decision even necessarily eliminate local control of educational funding. The District Court struck down nothing more than the continued

⁹⁷ See n. 98, *infra*.

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interdistrict wealth discrimination inherent in the present property tax. Both centralized and decentralized plans for educational funding not involving such interdistrict discrimination have been put forward.⁹⁸ The choice among these or other alternatives remains with the State,

⁹⁸ Centralized educational financing is, to be sure, one alternative. On analysis, though, it is clear that even centralized financing would not deprive local school districts of what has been considered to be the essence of local educational control. See *Wright v. Council of the City of Emporia*, 407 U. S. 451, 477-478 (1972) (BURGER, C. J., dissenting). Central financing would leave in local hands the entire gamut of local educational policymaking—teachers, curriculum, school sites, the whole process of allocating resources among alternative educational objectives.

A second possibility is the much discussed theory of district power equalization put forth by Professor Coons, Clune, and Sugarman in their seminal work, *Private Wealth and Public Education* 201-242 (1970). Such a scheme would truly reflect a dedication to local fiscal control. Under their system, each school district would receive a fixed amount of revenue per pupil for any particular level of tax effort regardless of the level of local property tax base. Appellants criticize this scheme on the rather extraordinary ground that it would encourage poorer districts to overtax themselves in order to obtain substantial revenues for education. But under the present discriminatory scheme, it is the poor districts who are already taxing themselves at the highest rates, yet are receiving the lowest returns.

District wealth reapportionment is yet another alternative which would accomplish directly essentially what district power equalization would seek to do artificially. Appellants claim that the calculations concerning state property required by such a scheme would be impossible as a practical matter. Yet Texas is already making far more complex annual calculations—involving not only local property values but also local income and other economic factors—in conjunction with the Local Fund Assignment portion of the Minimum Foundation School Program. See V Texas Governor's Committee Report 43-44.

A fourth possibility would be to remove commercial, industrial, and mineral property from local tax rolls, to tax this property on a state-wide basis, and to return the resulting revenues to the local

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not with the federal courts. In this regard, it should be evident that the degree of federal intervention in matters of local concern would be substantially less in this context than in previous decisions in which we have been asked effectively to impose a particular scheme upon the States under the guise of the Equal Protection Clause. See, e. g., *Dandridge v. Williams*, 397 U. S. 471 (1970); cf. *Richardson v. Belcher*, 404 U. S. 78 (1971).

Still, we are told that this case requires us "to condemn the State's judgment in conferring on political subdivisions the power to tax local property to supply revenues for local interests." *Ante*, at —. Yet no one in the course of this entire litigation has ever questioned the constitutionality of the local property tax as a device for raising educational funds. The District Court's decision, at most, restricts the power of the State to make educational funding dependent exclusively upon local property taxation so long as there exists interdistrict disparities in taxable property wealth. But it hardly eliminates the local property tax as a source of educational funding or as a means of providing local fiscal control.⁹⁹

The Court seeks solace for its action today in the possibility of legislative reform. The Court's suggestions of legislative redress and experimentation will doubtless be of great comfort to the school children of Texas' disadvantaged districts, but considering the vested interests of wealthy school districts in the preservation of the

districts in a fashion that would compensate for remaining variations in the local tax bases.

None of these particular alternatives are necessarily constitutionally compelled; rather, they indicate the breadth of choice which remains to the State if the present interdistrict disparities were eliminated.

⁹⁹ See n. 98, *supra*.

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status quo, they are worth little more. The possibility of legislative action is, in all events, no answer to this Court's duty under the Constitution to eliminate unjustified state discrimination. In this case we have been presented with an instance of such discrimination, in a particularly invidious form, against an individual interest of large constitutional and practical importance. To support the demonstrated discrimination in the provision of educational opportunity the State has offered a justification which, on analysis, takes on at best an ephemeral character. Thus, I believe that the wide disparities in taxable district property wealth inherent in the local property tax element of the Texas financing scheme render that scheme violative of the Equal Protection Clause.¹⁰⁰

I would therefore affirm the judgment of the District Court.

¹⁰⁰ Of course, nothing in the Court's decision today should inhibit further review of state educational funding schemes under state constitutional provisions. See *Milliken v. Green*, — Mich. —, — N. W. 2d — (1972); *Robinson v. Cahill*, 118 N. J. Super. 223, 287 A. 2d 187, 119 N. J. Super. 40, 289 A. 2d 569 (1972); cf. *Serrano v. Priest*, 5 Cal. 3d 584, 487 P. 2d 1241, 96 Cal. Rptr. 601 (1971).

APPENDIX I TO OPINION OF MARSHALL, J., DISSENTING

REVENUES OF TEXAS SCHOOL DISTRICTS
CATEGORIZED BY EQUALIZED PROPERTY VALUES AND SOURCE OF FUNDS*

CATEGORIES†	Market Value of Taxable Property Per Pupil	Local Revenues Per Pupil	State Revenues Per Pupil	State and Local Revenues Per Pupil (Columns 1 and 2)	Federal Revenues Per Pupil	Total Revenues Per Pupil (State-Local- Federal, Columns 1, 2 and 4)
Above \$100,000 (10 Districts)		\$610	\$205	\$815	\$ 41	\$856
\$100,000-\$50,000 (26 Districts)		287	257	544	66	610
\$50,000-\$30,000 (30 Districts)		224	260	484	45	529
\$30,000-\$10,000 (40 Districts)		166	295	461	85	546
Below \$10,000 (4 Districts)		63	243	305	135	441

*Source: Policy Institute, Syracuse University Research Corporation, Syracuse, N. Y.

†Prepared on the basis of a sample of 110 selected Texas School Districts from data for the 1967-1968 school year.
Based on Table V to affidavit of Joel S. Berke, App., at 208.

66 SAN ANTONIO SCHOOL DISTRICT *v.* RODRIGUEZAPPENDIX II TO OPINION OF MARSHALL, J.,
DISSENTINGTEXAS SCHOOL DISTRICTS CATEGORIZED BY
EQUALIZED PROPERTY VALUES, EQUAL-
IZED TAX RATES, AND YIELD OF RATES*

CATEGORIES† Market Value of Taxable Property Per Pupil	EQUALIZED TAX RATES ON \$100	YIELD PER PUPIL (Equalized Rate Applied to District Market Value)
Above \$100,000 (10 Districts)	\$.31	\$585
\$100,000-\$50,000 (26 Districts)	.38	262
\$50,000-\$30,000 (30 Districts)	.55	213
\$30,000-\$10,000 (40 Districts)	.72	162
Below \$10,000 (4 Districts)	.70	60

*Source: Policy Institute, Syracuse University Research Corporation, Syracuse, N. Y.

†Prepared on the basis of a sample of 110 selected Texas School Districts from data for the 1967-1968 school year. Based on Table II to affidavit of Joel S. Berke, App., at 205.

APPENDIX III TO OPINION OF MARSHALL, J. DISSENTING
SELECTED BEXAR COUNTY, TEXAS, SCHOOL DISTRICTS CATEGORIZED BY
EQUALIZED PROPERTY VALUATION AND SELECTED INDICATORS
OF EDUCATIONAL QUALITY¹

Selected Districts From High to Low by Market Valuation Per Pupil ²	Professional Salaries Per Pupil ³ Per Cent	Teachers With ⁴ College Degrees	With ⁴ Masters Degrees	Per Cent of Total Staff With Emergen- cy Permits ⁵	A Student Counselor Ratio ⁶	Professional Personnel Per 100 Pupils
ALAMO HEIGHTS	\$372.00	100%	40%	11%	645	4.80
NORTH EAST	288.00	99	24	7	1,516	4.50
SAN ANTONIO	251.00	98	29	17	2,320	4.0
NORTH SIDE	258.00	99	20	17	1,493	4.30
HARLANDALE	243.00	94	21	22	1,800	4.00
EDGEWOOD	269.00	96	15	47	3,098	4.06

¹ Policy Institute, Syracuse University Research Corporation, Syracuse, New York.

² Prepared on the basis of a sample of six selected school districts located in Bexar County, Texas, from data for the 1967-1968 school year.

³ Policy Institute, Syracuse University Research Corporation, Syracuse, New York.

⁴ U. S. District Court, Western District of Texas, San Antonio Division, *Answers to Interrogatories*, Civil Action No. 68-175-SA.

⁵ *Ibid.*

⁶ *Ibid.*

Based on Table XI to affidavit of Jod S. Berke, App., at 220.

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APPENDIX IV TO OPINION OF MARSHALL, J.,
DISSENTINGBEXAR COUNTY, TEXAS, SCHOOL DISTRICTS
RANKED BY EQUALIZED PROPERTY VALUE
AND TAX RATE REQUIRED TO GENERATE
HIGHEST YIELD IN ALL DISTRICTS*

Districts Ranked from High to Low Market Valuation Per Pupil†	Tax Rate Per \$100 Needed to Equal Highest Yield
ALAMO HEIGHTS	\$.68
JUDSON	1.04
EAST CENTRAL	1.17
NORTH EAST	1.21
SOMERSET	1.32
SAN ANTONIO	1.56
NORTH SIDE	1.65
SOUTH WEST	2.10
SOUTH SIDE	3.03
HARLANDALE	3.20
SOUTH SAN ANTONIO	5.77
EDGEWOOD	5.76

*Policy Institute, Syracuse University Research Corporation, Syracuse, New York.

†Prepared on the basis of the 12 school districts located in Bexar County, Texas, from data from the 1967-1968 school year.

Based on Table IX to Affidavit of Joel S. Berke, App., at 218.

TERMS OF GRANT

Recipient: Washington Institute for Quality Education

Amount: \$15,000

Budget:

Statistical Analysis (including copying and printing for presentation purposes)	\$6,100
Secretary/Administrative Assistant	1,800
Typist	1,500
Legal Consultants	2,800
Rent, telephone and office supplies	1,800
Research materials, travel and miscellaneous	1,000
	<u>\$15,000</u>

Any significant changes should be approved in advance by Carnegie Corporation

Purpose: Toward the cost of a study of alternative plans for intradistrict equity in school financing in the District of Columbia.

Restrictions: The grantee agrees:

1. To repay any portion of the amount granted which is not used for the purpose of the grant.
2. To submit a full and complete report on the manner in which the funds are spent and the work accomplished within two months after the completion of the project but in no case later than August 30, 1973.
3. To maintain records of receipts and expenditures and to make the WIQE books available to the grantor on request.
4. Not to use any of the grant funds
 - (a) to carry on propaganda, or otherwise attempt, to influence legislation, within the meaning of section 4945 (d) (1) of the Internal Revenue Code;
 - (b) to influence the outcome of any specific election or to carry on, directly or indirectly, any voter registration drive, within the meaning of section 4945 (d) (2);

(c) to make any grant which does not comply with the requirements of section 4945 (d) (3) or (4); or (d) to undertake any activity for any purpose other than a charitable, scientific, literary or educational purpose.

5. In preparing and disseminating reports produced with any portion of the grant funds, to comply fully with the requirements set forth in section 4945 (e) concerning nonpartisan analysis, study, or research.

Signature of Grantee:

Title:

Date:

Arthur W. Hobson
Director
2-4-72

harmony are deeply planted and threaten us with danger all the way. But black power, black dignity, black pride in black beauty gain ground the world over and will be accepted by ourselves and by all the world one day.

"In a colony, as Jamaica once was, the resources of the country were all in the hands of white men from countries where white power prevailed. And now we are a nation with black power in political affairs and with control of our own destinies as a nation. But the harsh facts of economic life constrain us more than need be to accept money and opportunity for growth from countries where white power prevails, so that as our country grows there is reflected here the continued denial of power in our own land, economic power.

"In our nation black power must also mean that strengthened with political power the black majority in Jamaica, joining forces with all of the other powers in Jamaica, must use its fundamental political power to wage war on poverty and lack of opportunity, on inequality in land holding and education, and to fight for all the things that make for an equal world in this day and age of ours.

"It may well be true to say that there are now and for a long time have been black power elements that exploit the feelings of color that lie on the surface of our society, where society is divided between black and anti-white or light-brown. This is not to be accepted in Jamaica and it will not be accepted in Jamaica. We do not want in Jamaica to establish the very thing we have been so many years to break down in our country. We do not want to establish in Jamaica the practices of America or Rhodesia or South Africa which we loathe and despise.

"The greatest danger that confronts the human race," Mr. Manley continued, "is race itself, and the patterns of thought that set race against against race." Jamaicans despise South Africa and Rhodesia for doing so. "We should be proud to think that we can and must avoid copying them or the United States or England, the only difference being that we are on top and the whites underneath. We should be proud to think that we can set the world an example by carrying through till we

have achieved our goal that will come. When Jamaica is an integrated community, when there is an inner bond of loyalty, the deepest of all loyalties, among all our people of whatever class or color or creed, when we laugh for the same reasons and cry for the same causes together, then we will have the spiritual foundations on which great efforts can be built."

These were the thoughts of Norman Manley. In recalling them, one cannot but reflect that his forebears did not freely migrate to the Caribbean to better their fortunes in life. They moved here in chains, packed in the holds of ships to serve as slaves to their white "brothers." Yet it is against this background that such a magnanimous spirit could arise.

Might one not say that it was in this spirit and against this background of black power, as lucidly spelled out by Mr. Manley, that the Holy See within the last four years nominated in our episcopal conference area five bishops—all of them native to this area. They are: Archbishop Anthony Pantin, Port-of-Spain, Trinidad; Bishops Samuel E. Carter, S. J., auxiliary of Kingston, Jamaica; Edgerton R. Clarke, Montego Bay; Patrick Webster, O.S.B., St. George's, Grenada; Maurice Marie-Sainte, auxiliary in Fort de France, Martinique. It was not a question of token appointments or honors given to Negro priests. These bishops were chosen as local men who know their people, men under whom and with whom white missionaries loyally and gladly serve the Church. As the Caribbean Islands have one of the highest rates of population increase in the world, local bishops will accordingly be multiplied for the service of the faithful. (Already, the proportionately large representation of non-white bishops in attendance at the recent Synod in Rome greatly interested our Caribbean people.)

The problem of race relations will not be solved by advanced technology or a booming economy. Heart transplants are not the cure for our ailing society, but change of heart, transmutation of the human heart to the Heart that is "meek and humble."

[JOHN J. MCELENEY, S. J., now Archbishop of Kingston, has headed the Church in Jamaica since 1950.] ■

Thomas M. Gannon

Three outstanding black leaders tell a group of priests the real needs of black people as blacks see them, and suggest ways in which Catholics can influence government and society into assuring true racial justice

In accordance with the directives of their order's 31st General Congregation, held in 1965-1966, the American Provinces of the Society of Jesus have for the last two years been re-examining their present apostolic commitments and exploring possibilities for new ministries. In particular, the Maryland Province, which staffs five colleges and universities, seven high schools, eleven parishes and two retreat houses, and embraces southern New Jersey, Pennsylvania, Maryland, the District of Columbia, Virginia, West Virginia and North Carolina, has been seeking new ways to serve the five million black people who live within the province's boundaries.

With a few notable exceptions, Maryland Province Jesuits have in the past had little contact with black people. Consequently, though willing to devote some, perhaps a substantial, portion of their resources to the service of the black community, they were not sure where to begin. Reasoning that the people to be served knew best the kinds of service required, they contacted several black leaders from the Philadelphia - Baltimore - Washington area and asked them to articulate the needs of the black community.

Earlier this year, these leaders met with about fifty Maryland Province men in the hall of St. Ignatius Parish in downtown Baltimore. During a day-long meeting, these leaders not only outlined the needs of black people, but also recommended a program of new apostolic initiatives that they believed could substantially contribute to the cause of racial justice in America.

Julius Hobson of Washington, D. C., an economist for the Social Security

What the Black Community Wants

Administration, was the first speaker. Elected to the District of Columbia school board two months before, he had been the plaintiff in the 1967 *Hobson vs. Hansen* case, which led to the elimination of the "track system" from the schools of the nation's capital. (The system had demoralized both teachers and students by grouping children homogeneously in the early grades of elementary school, and keeping them in the same "track," without attention to their improvement, for the rest of their schooling.) Mr. Hobson began by sarcastically complimenting, *in absentia*, whoever had persuaded the civil rights movement of the early 1960's to expend its energies on sit-ins, wade-ins, marry-ins, all kinds of "-ins," each of them in areas that did not really matter. "It was a brilliant diversion," he said, "for racism is not primarily political or social, but economic. Racism is a rationalization for economic exploitation. It knows no color line. For the protection of their own economic interests, middle-class blacks can be just as racist as middle-class whites."

Mr. Hobson did not expect Mr. Nixon and his Cabinet ("Tricky Dick and the Dirty Dozen," as he called them) to correct this economic exploitation. He was especially critical of Daniel Patrick Moynihan, Mr. Nixon's chief adviser on urban affairs. "Moynihan has taken the word 'nigger' and translated it into sociological concepts like 'culturally deprived' and 'socially disadvantaged.' These terms sound less offensive than 'nigger,' but they mean the same thing."

The economist admitted his apprehension about the effectiveness of the black power movement, as well. "To change the basic institutions of Ameri-

can society," he said, "you don't need an ear for soul music, or an Afro haircut, but a social conscience. Unfortunately, the black power movement is relying on slogans and clichés, and measuring a man's militancy by the amount of profanity he uses in speeches abusing white audiences. We face a formidable, entrenched foe, a foe that will not be moved by slogans, but only by hard work, persevering effort and careful study."

To illustrate what he meant by "persevering effort," Mr. Hobson cited several examples. His own organization, ACT, whose motto is "Research and Destroy," had spent five years investigating D. C. school practices before bringing the Board of Education into court in the landmark *Hobson vs. Hansen* case.

Another example was a personal study Mr. Hobson had made of police brutality in Washington, "one problem that name-calling won't solve." He had lectured at police academies and at law enforcement convocations, telling policemen that their function was to apprehend, not punish; but they had not listened. "So I built a parabolic microphone, the kind they use at football games to pick up the quarterback calling signals, mounted it on the roof of my car, and spent two months cruising through the ghetto on Friday and Saturday nights, listening in on the arrests made by the police. Their brutality with the stick was frightening, but their verbal brutality, the abuse they showed on the people they dealt with, was twice as bad. Policemen have an urge to persecute; they constitute a greater

danger to society than any bank robber." Mr. Hobson, a United Nations Fellow, said he would soon present to the General Assembly documented cases of this police brutality, and tell the delegates how the courts and the community had handled those cases. "I intend," he promised, "to charge the United States of America with genocide."

Rat relocation was a third project Mr. Hobson had devised to implement ACT's "Research and Destroy" policy. Rat bites were infecting 20 children a month in the D. C. ghetto, but the Federal officials responsible for rodent control said they were powerless to help, because Congress had not appropriated the necessary funds. "I bought some mousetraps," said Mr. Hobson, "set them up in the ghetto, and caught me some rats. After I collected about two dozen, I told those officials that I thought it was unconstitutional to segregate those rats in the ghetto. I told them I was going to correct the injustice done those rats by taking them over to Georgetown and releasing them there." The officials in question asked Mr. Hobson to postpone his rat relocation program for three days. At the end of that time, the same officials announced a crash rat extermination program for the ghetto.

Mr. Hobson's final illustration was the use of existing bankruptcy legislation for the benefit of the poor. "A while ago, I spoke to some Black Power people at the Harvard Business School and told them they didn't have to burn the country down to get what they wanted, that they could work with laws already on the books. For example, the poor can use the bankruptcy statutes to get out of debt. The rich

know about these laws; they use them. Why not the poor? One organization in Alameda City, Calif., the Poor Man's Law Group, has multiplied by ten the bankruptcy rate in its area, freeing hundreds of poor people from their debts simply by informing them that the bankruptcy statutes apply to them as well as to the rich. The special interest groups threatened by this tactic," Mr. Hobson said, "have already dispatched their lobbyists to Capitol Hill to ask Congress to amend the bankruptcy laws."

During the question period that followed Mr. Hobson's talk, he was asked what specific things Jesuits could do. "You can plant the seeds of social consciousness in your students. This is a good thing. If you have a program you think will work, you can come into the black community as well. You don't have to be indigenous. There are phony black liberals and phony white liberals. If you're phony, the community will know it; if you're sincere, they'll know it too. However, you have power, money, influence. You have a visible identity with the power structure, with the bankers, the real estate men, the merchants. If you want to use your resources to help the black community, don't waste them on Headstart. Use them on the power structure.

"I'm partial to the image of the polluted stream," Mr. Hobson continued. "It doesn't help to take a quart of water out of a polluted stream, purify it, then throw it back into the same stream it came from. It's much better to clean up the whole stream. I'm not very fond of Booker T. Washington; I think he's the all-time great Uncle Tom. But he did say one wise thing: 'Put down your bucket where you are, and draw your water there.' For you Jesuits, that means working with the power structure."

One of the Maryland Province men present suggested that the salvation of Mr. Hobson's people lay in leaders like himself. His reply was a trifle impatient. "My people? You are my people. Anyone with a social conscience is one of my people. If you have a social conscience, you can help me. Through your law schools, for example. The

courts, if Nixon doesn't corrupt them, are our last bastion. I have confidence in the courts: I watch Perry Mason on television, and I won one case. Get your law students to research poor people's laws. They'll find there's more crime in City Hall than there is in the ghetto."

At the end of the question period, Mr. Hobson summarized what he had said: "Racism is basically an economic problem. It's a question of how you produce goods and how you exchange those goods. Black Power is all right, but it's a psychological prop. You shouldn't go off on any psychological kick; you've got to deal with economic institutions. Don't get me wrong. I don't want black people to become capitalists. A capitalist is a capitalist, regardless of his color; and capitalists are selfishly motivated men who are only interested in making a buck.

"None of us is completely cut off from the experience of the ghetto," Mr. Hobson insisted. "We all know what it is to be cold, to be hungry. The basic question you have to ask yourselves is this: are you willing to let the other guy have what you have? It's a question that can't be answered by black capitalism; we have to go beyond that. And to answer that question, you don't have to understand me and my blackness, as the Black Power people contend. You just have to understand what it is to be fair."

The second speaker was John O. Hopkins, who had been co-ordinator of community school programs in Baltimore until a few months before, when the Board of Education took issue with his militant advocacy of community control of the schools. His topic was "The Use of Existing Institutions." Holder of a master's degree in philosophy from Jesuit-run Gonzaga University in Spokane, Wash., Mr. Hopkins thanked the Jesuits for inviting him to speak. "I'm always grateful for the opportunity to talk back to the kinds of people who were responsible for my miseducation."

The educator offered ironic congratulations to his audience for the skill with which they had established their institutions: "There aren't many doors that you can't open when you want to." He confessed his amazement that a group so powerful had had no significant impact on racism, on racial op-

pression and on the problems of black people in the area of the Maryland Province. He then read excerpts from a 1967 letter on the interracial apostolate sent by Fr. Arrupe, the Jesuit General, to the order's American members. In passing, Mr. Hopkins noted: "If you had taken this letter seriously, you wouldn't need me to come and talk to you."

One passage in Fr. Arrupe's letter Mr. Hopkins found particularly meaningful. In it the Jesuit General had urged American Jesuits to co-operate with all who are working at a grass-roots level for constructive social change. "You know," Mr. Hopkins said, "it's easy to side with Julius Hobson and me. But maybe we're not saying the right things. Maybe you should be siding with Stokely Carmichael and Rap Brown and Eldridge Cleaver, because they're the men who are working at the grass roots. Think about it."

Addressing himself to the principal theme of his talk, Mr. Hopkins said that the root of racism is not personal, individual oppression. "The real cause is institutional in nature. All kinds of institutions are involved—economic, educational, religious. That's where you have to put your manpower, your money and your concern. So use the Baltimore City Council, use the Archdiocese of Baltimore. Manipulate those institutions, because in the past they have successfully oppressed poor black people. Your own schools have created an inferior image of black people; they've played a major part in developing and supporting racists. Can they be used, changed, reoriented? Personally, I don't think so, but I'm willing to give those who say 'yes' a chance to prove it can be done."

MMr. Hopkins singled out church-related institutions for further attention: "You ought to abolish these all-white Catholic schools of yours. It's a travesty that in this day and age we tolerate them. These are the institutions that have to be hit, and hit hard. You should learn how to manipulate Cardinal Shehan and his staff, too. He's one of the most powerful men in this area. Who's manipulating him? All these hospitals, all these private schools,

they're the institutions that perpetuate racism. You have access to them; black people don't."

The birth control controversy between Washington's Cardinal O'Boyle and the dissenting priests of his archdiocese exasperated Mr. Hopkins: "It's hard for me to see why people in this area get so upset about sex relations, yet don't care about what's happening in the ghettos. What people do in bed with each other doesn't concern me, and I don't think that it should concern you, either. How many times have these men spoken out and made their people aware of the evil of racism?"

The public sector was Mr. Hopkins's next target. "The Baltimore City Council is corrupt—corrupt in this sense, that its members have failed to understand the issues, to speak out for justice. You ought to act against it. You ought to work on the police, because they are a travesty, too. All this hulla-balloo about law and order, you know what it means—keeping black people in their place. The black community is powerless; we don't have the military force. You should develop ways of manipulating these law enforcement agencies—the Baltimore Police Force, the Philadelphia Police Force, even the Maryland National Guard. You have the money, the physical resources, and eight hundred men. All you have to do is use them."

One of the audience asked Mr. Hopkins how these resources could be re-committed to eliminate racial oppression. "You need a programed strategy—new goals, new forms, new methods," the black educator said. "The final thing you need is courage. You can't be afraid of being hurt, of being put down, of losing friends, of losing money. If you don't have a strategy, if you don't have courage, you can't change institutions. If you have these things and are willing to use them, you can. It's that simple."

"There will be problems, of course. Take the history of your institutions. In the past, they've helped to create bad communities by fostering racist attitudes. You have to overcome that history. Nowadays, poor blacks reject everything that looks white. The Jesuits

are essentially a white man's organization, so black people will tend to reject out of hand an organization that is so obviously segregated. Racism is seen more and more as a strictly secular problem today, since in the past the black churches have been used to oppress black people. Because you're an organized religious group, they'll tend to reject you as well. This authority business, you are high on it. Black people don't take to it, though. Your authority structure is an obstacle; it prevents you from putting into practice what Fr. Arrupe is talking about."

"You have to put aside the old forms," Mr. Hopkins continued. "They're dead, sick, ineffective. You have to find new forms that cut to the roots of the problem—in the Roman Catholic Church, the Riggs National Bank, the school boards, the city councils. Much of the problem lies in the way people are thinking. You can shape the thought of millions in this area, but you have to come up with structures that do something. Your schools are not doing anything significant right now; they ought to be providing an honest education for people who badly need it."

Mr. Hopkins concluded his remarks with a biblical reference. "I'm not a very religious person," he said, "but when I read the New Testament, I see that for Christ the poor, the ignorant and the weak came first; the rest could take care of themselves. If you set priorities for people who are not poor, not ignorant, not weak, not black, you're only deluding yourselves."

The final speaker of the day was Walter Carter, director of community organization for the Baltimore Model Cities Program. At the beginning of his talk, he mentioned some of the Jesuits he knew. When he first met them, at Loyola High School in suburban Towson ("I went out there to get some fresh air," he said. "I was tired of looking at the rotten, stinking ghetto"), he had taken them lightly, he admitted. But he had come to respect them. "You have half a dozen people who are with it, and that's enough. You got something going."

After this introduction, Mr. Carter launched into the body of his address. "I wonder," he mused, "if we are ready to grapple with the most crucial social

issues that America has faced since the country was taken from the Indians—the existence of an economic underclass and of a racial caste system. These are two wars that America hasn't won, and it's been fighting them for 400 years. Because of these two issues, America is a cruelly maladjusted society. You just can't live in this society and be adjusted."

Had the Federal government dealt successfully with these issues? Mr. Carter thought not. He listed the agencies that had tried: HEW, OEO, HUD and a dozen others. "Sounds like alphabet soup, doesn't it? But if you're poor and you're black, you know what those letters mean. Yet all these agencies have not arrested or reversed the social pathology of the ghetto. They haven't rescued black people from poverty; they haven't liberated them from racial discrimination." The Catholic Church could help black people, could act as a catalyst where the Federal government had failed. "You know, this Church of yours is no small storefront. When I see your schools, I get jealous. You got a couple of bags that you carry."

He went on to discuss the civil rights movement of the early 1960's: "It did effective work, I think, but it was only concerned with the surface manifestations of the problem. It only took the wrapping off the problem. The question now is how to use the society's institutions to save millions of people and save the country in the process."

What was the problem that the civil rights movement had only unwrapped? According to Mr. Carter, it was education, or rather miseducation. He used Baltimore as an example. About 80 per cent of the children in the city's suburbs finish high school; the ratio is reversed in the inner city. "These kids may drop out of one set of institutions, but society has another set ready for them, institutions like the Maryland Training School for Boys, the Maryland House of Correction, the Maryland State Penitentiary. Take a look at the faces of the inmates in those institutions sometime. You'll see the end-product of a miseducation system that punishes the victims of a decadent so-

cial system for the crimes that other people have committed."

Mr. Carter marshaled statistics in support of his thesis: A total of 55,000 Baltimore children, most of them black, went malnourished to school each day. Of 3,400 school-related cases handled by social workers in 1967, only 1,200 were closed. Social workers made 50,000 home visits to investigate poor attendance; 700 children were suspended indefinitely. "That means," said Mr. Carter, "they were too hostile, too aggressive and too intelligent to tolerate the miseducation they were receiving. The magnitude and depth of this problem has not been overstated. It concerns a quarter of a million children. They were never wanted, now they're not needed, and in present-day Western uncivilization, that means they're ready for extermination." In Mr. Carter's opinion, clergymen were blind to the problem. "They're too much caught up in the hereafter, in morality, in the inevitability of heaven and hell, and they're not aware of kids who are catching hell every day in every conceivable way here on earth."

What caused the problem? "I remember reading where Frederick Douglass said he'd never seen so many house niggers in all his life as he saw in Baltimore. The system did it. These kids can't live in the system, they can't live outside the system; the system is on us." Social workers did not help. "They're like missionaries. They don't get rid of misery. They teach people to make peace with misery."

Mr. Carter took up another facet of the racial situation: miscegenation. "You know, the white man has good reason to write about the Negro family. If it weren't for the white man, I'd be pearly black." Mr. Carter is a light-skinned Negro. "I don't hate those white men who made me what I am, because if I did, I'd be hating myself, and that's the most self-destructive thing I could do. You Catholics have a real problem in trying to understand the criminal brutality of this situation, because you have a morality. In Brazil, you kept slave families together. In America, it was different. The man with the muscles was sold off, the most

beautiful woman was sold off, and you can be sure that black men didn't create an integrated people by having affairs with white women."

After describing how the criteria for the present Aid to Families with Dependent Children program (AFDC) perpetuates the destruction of the Negro family begun during the days of slavery, Mr. Carter advanced his proposal for a new ministry: "What the Jesuits created for white people should be created for poor black people. You ought to set up a residential prep school in the ghetto, for black boys, to deal preventively with the symptomatic manifestations of this social pathology, before the fact, before these kids end up in jail—and the sooner you do it, the better."

"You Jesuits can be a catalyst in the Catholic Church. It's the largest corporation in the world. You have more power than you give yourselves credit for. If I think poor, oppressed black people have power, I know you've got power. What's needed now, what's most important, is a major, massive reallocation of resources, both human and material, to move institutions, to move key segments of the population. You should move your schools to the ghetto and rename them for Nat Turner, Marcus Garvey, W. E. B. DuBois, Frank Robinson, Earl "The Pearl" Monroe—and anyone else these kids want to name them for. I believe you want to do it. You've always been kind; now you want to flex your spine."

Jesuits, Mr. Carter said, were ideally suited for this kind of work. "You can risk much more than any of us. I have three kids, yet I have to keep sticking my neck out in this struggle, even if it means that I might get hurt someday. If I teach those kids by my actions to make peace with misery, to make peace with evil, I'm not a father, I'm a myth. I don't deserve the name 'father,' I deserve to be dead."

"I'm told that you Jesuits have been characterized by a pioneering zeal; through your schools, you've given a lot of comfort to white folks. We're asking that you take that same commitment, redouble it and rededicate it. Education is the hallmark of black salvation. We've never been wanted; we have to be needed. Before we can find a market for our skills, we have

to acquire the skills. President Nixon and Vice President Agnew won't help us with the Federal government; maybe the Jesuits will. You can be a catalyst for the Catholic Church and for all institutions."

Mr. Carter's presentation was followed by a discussion period. At its close, a member of the audience offered two arguments for the retention of the order's middle-class schools: the opportunity to combat white racism, and financial necessity. Mr. Carter questioned both. "Those people in your middle-class institutions, forget them. They're going to get educated—if not at Loyola High School, then some place else; if not at Georgetown University, then at Maryland or George Washington. Even the Negroes in those schools are going to get educated—at Howard or Morgan State. What you ought to do is put your resources where there's the greatest need, where you can do the greatest good, and that's in the ghettos. As far as money is concerned, if I have to compromise with evil to get money, I don't want it. And if you compromise with evil in order to get money, you know what you're doing? You're selling your soul to the devil. You don't want to do that, do you?"

On that note, the meeting ended. It had served its purpose. Thanks to the three speakers, those in attendance had learned, perhaps for the first time, the needs of black people as black people experience them. The ultimate impact of the meeting cannot be gauged at present; though the Maryland Province's survey of current and future ministries is now complete, only a portion of its conclusions, those dealing with the nature of religious life, have been made public. Yet it will not be wholly surprising if someday the commitment urged by Mr. Hobson, Mr. Hopkins and Mr. Carter becomes a reality for the Province. Indeed, a few months after the St. Ignatius meeting, Mr. Carter—having resigned his post with the Model Cities Program, accepted a position with the Maryland Province as special advisor to the Provincial on race and poverty.

[THOMAS M. GANNON, S. J., is an associate editor of AMERICA.] ■

